

Proposed Lease (Water Lease) for the Nāhiku, Ke`anae,
Honomanū, and Huelo License Areas

Corrected Final Environmental Impact Statement



September 2021 (Corrected)

Prepared For



Alexander & Baldwin, Inc.
East Maui Irrigation Company, Ltd.

Prepared By



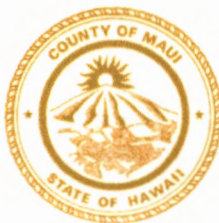
Wilson Okamoto Corporation
1907 South Beretania Street, Suite 400
Honolulu, Hawaii 96826

APPENDIX N:
Draft EIS Comments and Responses

MICHAEL P. VICTORINO
Mayor

MARC I. TAKAMORI
Director

MICHAEL B. DU PONT
Deputy Director



**DEPARTMENT OF TRANSPORTATION
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAI'I 96793**

TELEPHONE: (808) 270-7511
FAX: (808) 270-7505

October 4, 2019

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 S. Beretania St., Suite 400
Honolulu, HI 96826



**SUBJECT: Notice of Availability
Draft Environmental Impact Statement
Proposed Lease (Water Lease) for Nāhiku, Ke'anae, Honomanū
and Huelo License Areas**

Dear Mr. Matsukawa,

Thank you for the opportunity to review and comment on this project. We have no comments to make at this time.

Sincerely,

A handwritten signature in black ink, appearing to be "Marc Takamori".

Marc Takamori
Director

Cc: Ian Hirokawa, Land Division, DLNR

S:\Engineering Projects\2019_10_4 – Proposed Lease (Water Lease) for the Nahiku, Ke anae, Honomnu and Huelo License Areas



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Marc Takamori
Maui County Department of Transportation
200 South High Street
Wailuku, HI 96793

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Marc Takamori:

Thank you for comments dated October 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Thank you for the opportunity to review and comment on this project. We have no comments to make at this time.*

Response 1: We note that the County of Maui Department of Transportation does not have any comments to make at this time.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Letter to Mr. Marc Takamori

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September 3, 2021

submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Tara Furukawa <Tara.Furukawa@co.maui.hi.us>
Sent: Thursday, November 7, 2019 1:25 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Draft EIS Comments
Attachments: DraftEISComments.pdf

Attached please find comments from the County of Maui Department of Planning on the Draft EIS for the East Maui Water Lease.

Tara Furukawa, Staff Planner

County of Maui Department of Planning

2200 Main St., Suite 619

Wailuku, HI 96793

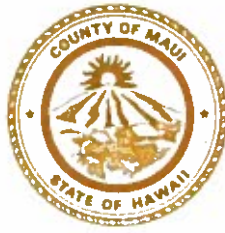
(808) 270-7520

Email: tara.furukawa@co.maui.hi.us

MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director



**DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793**

November 7, 2019

Mr. Ian Hirokawa
State of Hawaii Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Mr. Earl Matsukawa, AICP
Wilson Okamoto Corporation
1907 South Beretania Street, Suite 400
Honolulu, Hawaii 96826

Dear Mr. Hirokawa and Mr. Matsukawa:

**SUBJECT: COMMENTS ON THE DRAFT ENVIRONMENTAL
IMPACT STATEMENT (EIS) FOR THE PROPOSED EAST
MAUI WATER LEASE FOR THE NAHIKU, KEANAE,
HONOMANU AND HUELO LICENSE AREAS, MAUI,
HAWAII; TMKS: (2) 1-2-004:005, 007; (2) 1-1-002:002,
(2) 1-1-001:044, 050, (2) 2-9-014:001, 005, 011, 012, 017
(EAC 2019/0010)**

The Department of Planning (Department) is in receipt of the above-referenced document for the proposed East Maui Water Lease (Project). The Department has the following comments for preparation of the Final EIS:

1. We are supportive of a long-term water lease. The County only pays six cents per 1,000 gallons of water from the East Maui Irrigation Company. This is very inexpensive, and we understand its importance to our residents and farmers. We also understand that an investor, whether it be Mahi Pono or a local farmer, is better supported by financial institutions if water is guaranteed over a longer term period.
2. We note that the proposal is consistent with County long-range plans, such as the Maui Island Plan and our community plans, which include policies and actions to support agriculture, sustainable local food source,

Mr. Ian Hirokawa and Mr. Earl Matsukawa, AICP
November 7, 2019
Page 2

conservation, open space and business. In addition, they call for the protection of the environment, near shore waters and water source/aquifers.

3. We note that Alexander and Baldwin is the owner of the East Maui Irrigation Company (EMI) and, as per orders of the Board of Land and Natural Resources (BLNR) in April and June of 2016, Alexander and Baldwin is the applicant for the subject water lease. Because the water lease from the BLNR grants the lessee the “right, privilege, and authority to enter and go upon” the License Areas, which in this case is State-owned land, the Department questions whether the lessee should also be the applicant for the EIS and if the Office of Environmental Quality Control has commented on who should serve as applicant.
4. We realize that farm efforts require an investment of time, and that this is one of the reasons why the proposed water lease is for a period of 30 years. Because one of the landowners, Mahi Pono, owns large acreages proposed for farming, and their operations timeline included in the Draft EIS indicates that they should show crop growth and sales within approximately 12 years, the Department would support a shorter lease period of 15 or 20 years. Thirty years is a long time and agricultural, economic, climatic, corporate, social or other significant and relevant changes could occur within that time period. For example, the economy could take a downturn, or the lessee could go out of business. Per the Draft EIS, the water lease must accommodate a reservation in favor of the Department of Hawaiian Home Lands, which could have plans in the next few years that require more water. Because there are many scenarios of what could happen in the next 30 years, a somewhat shorter time period would allow activities associated with all water diversions to be monitored.
5. One of the impacts that the proposal may have on the environment is that it could potentially affect flora and fauna in areas dominated with native species. The Department supports the proposed mitigation of ensuring that when maintenance is conducted in the area, a qualified biological monitor is onsite to ensure no listed or candidate species are impacted and that when equipment, vehicles and construction material is brought from outside of the area, they should be washed and inspected.

Mr. Ian Hirokawa and Mr. Earl Matsukawa, AICP
November 7, 2019
Page 3

Thank you for the opportunity to comment on this document. Should you have any questions about the comments in this letter, please contact Staff Planner Tara Furukawa by email at tara.furukawa@mauicounty.gov or by phone at (808) 270-7520.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Danny A. Dias, Acting Planning Program Administrator (PDF)
Pam Eaton, Planning Program Administrator (PDF)
Kathleen Aoki, Administrative Planning Officer (PDF)
Tara K. Furukawa, Staff Planner (PDF)
Project File

MCM:TKF:rma

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10238-04
September 3, 2021

Ms. Michelle McLean
County of Maui Department of Planning
2200 Main Street, Suite 315
Wailuku, HI 96793

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Michelle McLean:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *We are supportive of a long-term water lease. The County only pays six cents per 1,000 gallons of water from the East Maui Irrigation Company. This is very inexpensive, and we understand its importance to our residents and farmers. We also understand that an investor, whether it be Mahi Pono or a local farmer, is better supported by financial institutions if water is guaranteed over a longer term period.*

Response 1: We acknowledge that the County of Maui Department of Planning is supportive of the long-term water lease. Please note that as discussed in 4.7.3 of the Draft EIS, under the Proposed Action (where the maximum amount of water is limited by the CWRM D&O and therefore below historical averages), the rate MDWS currently pays to EMI (\$0.06 per kgal) will increase because EMI’s per unit operating cost will increase as a result of fixed costs being spread out over a lower volume of water diverted and possible higher lease payments to the State compared to historic payments. While it is anticipated that the delivery costs to the County of Maui will increase, the exact amount of the increase cannot be known until the Water Lease is finalized. However, the estimate analyzed in the Draft EIS assumed a year 2030 water service

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Letter to Ms. Michelle McLean

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September 3, 2021

fee rate of \$0.08 per kgal. This figure was calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, the MDWS would pay an estimated \$214,600 per year to EMI. However, please note that this discussion in Section 4.7.3 of the Final EIS has been updated to take into account the latest equivalent per unit cost under the latest revocable permit as shown on pages 4-277 and 4-283.

With regards to your comment that water is very inexpensive and is important to Maui residents and farmers, the EIS recognizes that the Water Lease has the potential to affect many potable water users, as discussed in Appendix H and Appendix I of the EIS which are reflected in Chapter 3 and Chapter 4 of the EIS. Under the Proposed Action, potable water users would not experience any significant impacts. However, under the No Action alternative, or the Reduced Water Volume alternative, MDWS potable water users may experience significant increases in water costs or some users may even be left without a reliable source of potable water.

Comment 2: *We note that the proposal is consistent with County long-range plans, such as the Maui Island Plan and our community plans, which include policies and actions to support agriculture, sustainable local food source, conservation, open space and business. In addition, they call for the protection of the environment, near shore waters and water source/aquifers.*

Response 2: We acknowledge that the County of Maui Department of Planning notes that the Proposed Action is consistent with County long-range plans and community plans, which include policies and actions to support agriculture, sustainable local food source, conservation, open space and business as discussed throughout Chapter 5 of the EIS.

You comment, "...they call for the protection of the environment, near shore waters and water source/aquifers" is unclear. However, please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of Final EIS.

Comment 3: *We note that Alexander and Baldwin is the owner of the East Maui Irrigation Company (EMI) and, as per orders of the Board of Land and Natural Resources (BLNR) in April and June of 2016, Alexander and Baldwin is the applicant for the subject water lease. Because*

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Letter to Ms. Michelle McLean

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the water lease from the BLNR grants the lessee the "right, privilege, and authority to enter and go upon" the License Areas, which in this case is State-owned land, the Department questions whether the lessee should also be the applicant for the EIS and if the Office of Environmental Quality Control has commented on who should serve as applicant.

Response 3: As noted in Comment #3 above and as discussed in Section 1.4 of the Draft EIS, in 2016 the BLNR ordered A&B to prepare an EIS for the proposed Water Lease. However, please note that the State Office of Environmental Quality Control has not commented on who should serve as applicant to this EIS process.

Comment 4: *We realize that farm efforts require an investment of time, and that this is one of the reasons why the proposed water lease is for a period of 30 years. Because one of the landowners, Mahi Pono, owns large acreages proposed for farming, and their operations timeline included in the Draft EIS indicates that they should show crop growth and sales within approximately 12 years, the Department would support a shorter lease period of 15 or 20 years. Thirty years is a long time and agricultural, economic, climatic, corporate, social or other significant and relevant changes could occur within that time period. For example, the economy could take a downturn, or the lessee could go out of business.*

Response 4: We acknowledge that the County of Maui Department of Planning supports a shorter lease period of 15 or 20 years. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

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Letter to Ms. Michelle McLean

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Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Comment 5: *Per the Draft EIS, the water lease must accommodate a reservation in favor of the Department of Hawaiian Home Lands, which could have plans in the next few years that require more water. Because there are many scenarios of what could happen in the next 30 years, a somewhat shorter time period would allow activities associated with all water diversions to be monitored.*

Response 5: Regarding your comment about a reservation in favor of the Department of Hawaiian Home Lands, specific information regarding the DHHL future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related

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Letter to Ms. Michelle McLean
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to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019 as shown on pages 2-4 to 2-7. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM. Consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

With regards to shorter lease durations, please see Response #4 above.

Comment 6: *One of the impacts that the proposal may have on the environment is that it could potentially affect flora and fauna in areas dominated with native species. The Department supports the proposed mitigation of ensuring that when maintenance is conducted in the area, a qualified biological monitor is onsite to ensure no listed or candidate species are impacted and that when equipment, vehicles and construction material is brought from outside of the area, they should be washed and inspected.*

Response 6: As it relates to impacts to flora and fauna, Appendix C of the Draft EIS specifically addresses the flora and fauna considerations of the Proposed Action and alternatives. To minimize the impacts to flora and fauna in the License Area, Section 7 of Appendix C identifies several avoidance and minimization measures, including measures to avoid the introduction of additional invasive species to the License Area, which is harmful to the watershed and to native flora which are also reflected in Section 4.4 of the EIS. We acknowledge that the County of Maui Department of Planning supports the identified mitigation measures described in Section 4.4 of the EIS. Please note that the discussion of these avoidance and mitigation measures has been expanded on as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –

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Letter to Ms. Michelle McLean
Page 6 of 6
September 3, 2021

Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Tammy Frias <Tammy.Frias@mauicounty.us>
Sent: Tuesday, November 5, 2019 1:26 PM
To: Public Comment; ian.c.hirokawa@hawaii.gov
Cc: cbenjamin@abinc.com; suzanne.case@hawaii.gov; oeqchawaii@doh.hawaii.gov; mvaught@abhi.com; Kelly King; Kasie M. Takayama; David M. Raatz; Maui_County Council_mailbox
Subject: Comments on Draft Environmental Impact Statement for East Maui Water Lease (PAF 19-335)
Attachments: PAF 19-335g.pdf
Importance: High

Mr. Matsukawa and **Mr. Hirokawa:** Please refer to the attached letter and attachments from Kelly T. King, Chair, Maui County Council, dated 11/05/19. Thank you.

Mr. Benjamin, Ms. Case, Mr. Glenn, and Mr. Vaught: For your information, please refer to the attached. Thank you.

Mahalo,
Tammy Frias
Supervising Committee Secretary
Office of Council Services
Maui County Council

Council Chair
Kelly T. King



Director of Council Services
Traci N. T. Fujita, Esq.

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

November 5, 2019

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 South Beretania Street
Honolulu, Hawai'i 96826

Mr. Ian Hirokawa
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawai'i 96813

Via email only:

waterleaseeis@wilsonokamoto.com and ian.c.hirokawa@hawaii.gov

Dear Mr. Matsukawa and Mr. Hirokawa:

SUBJECT: COMMENTS ON DRAFT EIS FOR EAST MAUI WATER LEASE (PAF 19-335)

In accordance with Maui County Council Resolution 19-176, I am transmitting comments on the Draft Environmental Impact Statement for the Proposed Lease for the Nahiku, Ke`anae, Honomanū, and Huelo License Areas, also known as the Draft EIS for the East Maui Water Lease, as referenced in "The Environmental Notice," September 23, 2019, Office of Environmental Quality Control. The Council is not taking a position.

The statements and questions contained in the attached document were collected during the following public meetings:

- the Maui County Council on October 18, 2019;
- the Council's Environmental, Agricultural, and Cultural Preservation Committee on October 15, 2019; and
- the Council's Environmental, Agricultural, and Cultural Preservation Committee on October 7, 2019.

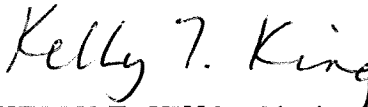
On the Council's behalf, I request due consideration of these statements and questions and a time extension to allow for additional public comment.

Earl Matsukawa and Ian Hirokawa
November 5, 2019
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To ensure efficient processing, please include the relevant PAF number in the subject line of your response.

Should you have any questions, please contact me or Legislative Analyst Kasie Apo Takayama at (808) 270-7665.

Sincerely,


KELLY T. KING, Chair
Maui County Council

paf:kmat:19-335g

Attachment

cc: Christopher Benjamin, President and Chief Executive Officer, Alexander & Baldwin, Inc.
Suzanne Case, Chairperson, Board of Land and Natural Resources
Scott Glenn, Director, Office of Environmental Quality Control
Mark Vaught, Operations Manager, East Maui Irrigation Company, Limited

Statements and Questions on:
DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR
EAST MAUI WATER LEASE
Maui County Council Resolution 19-176

Simon Russell, East Maui resident:

- Please provide verification that the current IIFS are being met by providing monthly records of stream flow for the streams contained in the IIFS requirements.
- Please provide a detailed description of the governance structure, decision-making ability, and ownership of EMI, Mahi Pono, and A&B.
- The landowner is the one who is supposed to do the EIS. In this case, the landowner is the State of Hawaii; therefore the State DLNR should be submitting the EIS.
- Provided that a for-profit, foreign-owned entity will own the EMI system, what assurance is there that the water will be adequately managed as a public trust?
- What is the dollar value of 65.86 million gallons per day if sold at the County of Maui rates for:
 - o Agriculture?
 - o Drinking water?
- Please provide a clear chain of land title under Hawaiian Kingdom law from the Kuleana Act of 1850 to the present “ownership” of the Crown Lands claimed by the applicant.
- Under whose authority was the land contained within the DEIS purchased, sold, or leased?

Tom Bacon, East Maui resident:

- Please provide a phased plan and year-by-year timeline detailing each proposed activity by Mahi Pono and each activity’s water-use needs
- Provide “performance indicators” and associated benchmarks within the plan.

Chris Gaardner, East Maui resident:

- The farm plan does not adequately justify the water needs put forth in the DEIS, and the farm plan does not provide sufficient detail to adequately assess its merits
- 10-12 years required to “remediate” the land. What water is needed for this to occur?
- The DEIS does not adequately integrate climate change scenarios
- What percentage of the total amount of water being asked for does each of the following represent:
 - o Kula Agriculture Park?
 - o Nahiku residents?
 - o Upcountry Maui domestic use?
 - o DHHL projects?

Lucienne de Naie, Ha`iku Community Association:

- Traditional and cultural practices were not addressed for each ahupua`a impacted by the lease.
- Representatives from Huelo shared their mana`o with the social-impact assessment.
- Can the document only be utilized by A&B, or could this EIS be utilized by the Department of Water Supply, an independent water utility, or other entity that would like to put forth a bid for the water lease at public auction?
- Is this EIS only for one bidder? It isn’t an open bidding process if there is only one bidder.
- The EIS assumes that the “natural stream conditions” are those that have been in existence following the diversion of 40-50 streams over a 100-year period. There is no data represented on pre-diversion conditions. Impacts cannot be adequately assessed without this data. There is a shifting baseline where conditions are assumed as normal when in fact they represent degradation of the natural ecosystems over time. Streams are deemed biologically unimportant based on their current post-diversion conditions, not on what their conditions should be assuming a more connected and functional pre-diversion ecosystem. (prior to the 1870s)
- The DEIS assumes that the 22 streams with IIFS addresses all cultural and environmental concerns
- 13 streams were left out of the IIFS process, and the impacts of these areas and the communities who live along them is completely unknown.
- The impacts of dams and diversion structures have not been assessed for fish passage.

- DHHL's allocation will belong to EMI until DHHL needs it. DHHL lands are legally entitled to this, and this water needs to be set aside.
- The DEIS states that a watershed-management plan will come at a later date. EMI is waiting for the State to conduct this plan. There is no assurance that this will happen within a reasonable time frame. This plan is an essential component of mitigating potential impacts associated with the spread of invasive species and loss of sensitive native habitat.
- Old agreements (1940s and '50s) included management plans
- The East Maui Watershed partnership has left out the local community
- Repurposing of reservoirs and water-storage infrastructure is touted in the DEIS as being impossible based on cost constraints. This option needs to be explored and outlined in the DEIS.
- There are massive high-flow storm events because of climate change, and these events need to utilize the existing infrastructure effectively.
- The "ownership change" alternative was dismissed because it is speculative, and the change in ownership will "not enhance environmental quality." This is not true.
- There needs to be a truthful analysis of ownership options.
- There is no assessment of the current conditions of the 100-year-old system and how it could be redesigned for the current century, or if aspects of it are even necessary.
- The future wastewater plant planned for Central Maui was not included in the DEIS as a potential water source to the central valley
- Please provide a detailed inventory of all available water sources to the central valley.
- Please provide detailed EMI infrastructure water-loss and -leakage statistics.

Albert Perez, Maui Tomorrow:

- There is a huge need for stream gauges in the lease area. We have very few gauges currently. There should be a gauge above and below each diversion so that we know how much is going into the ditches and tunnels.

Norman Franco, Board of Water Supply:

- Looked at comprehensive alternatives to what is the present system:
- One example is from Arizona, where a farmer makes a request for a certain number of gallons, and the system releases that exact amount to the farmer.

- There is a huge amount of waste and not good management of the resource that we have. The DEIS does not make note of any of this waste, or provide options for better management of the EMI system to increase conservation and better optimize the valuable water resource.
- It's important to note that the ditch is an "easement." You're buying the easement, not the land that A&B owns. The cost should be understood by an appraisal when considering purchasing the system.

Eva Blumenstein, Department of Water Supply:

- Prep notice for 2016 recommendations:
 - o Address the interaction between groundwater in the ditch area and in the central valley
 - o Costs should be included (O&M, capital costs, etc.)
- The Water Use and Development Plan:
 - o Diversify the sources (recycled water, climate adapted crops, conservation)
- Gravity-fed surface water is the most cost-effective from the County's perspective.

Caleb Rowe, Department of the Corporation Counsel:

- 30-year-lease application to BLNR
 - o Continued use of the diversions
- IIFS before CWRM
 - o CWRM sets how much water needs to be left in the streams to allow for biodiversity, cultural activities, and view plains.
 - o 27 streams received IIFS, and the ruling was not appealed to the Supreme Court (first in history)
 - o IIFS can be changed at the behest of the community
- BLNR can use CWRM's IIFS numbers, but they do not have to. They could impose their own determinations for the 13 streams that do not have an IIFS.
- Currently in the courts over the 2019 "revocable permits." The contested-case hearing was waiting for the DEIS to be completed.

Zack Williams, East Maui resident:

- There haven't been any studies conducted that explain why there is no connectivity between the mountain and the ocean at some of the lower - altitude streams, referencing Nahiku and Makapipi streams.

- EMI should allow for bids on improving and upkeeping their tunnels and gates, especially in Nahiku.
- The impacts to groundwater from diversion systems are not addressed in the Draft EIS.
- The Nahiku portion of EMI's water diversion should be condemned.

Joss Akoi, East Maui resident:

- Social and community impacts need to be further addressed in the Draft EIS.
- There isn't enough water for the Kuleana farmers who were once ensured water rights by Prince Jonah Kūhiō Kalaniana'ole. Hawai'i's history needs to be better documented and considered.

John Longmire, East Maui resident:

- Native Hawaiian practices and reliance on the streams will be affected if the water lease is granted; however, studies and concerns regarding these potential impacts are not adequately documented in the Draft EIS.
- Family's property borders an EMI easement, and because of this, we have encountered barriers to development of the property. Impacts to smaller family properties, and identifying which properties, should be acknowledged so that people are aware if they may be or are already implicated.

Councilmember Michael J. Molina:

- The total amount of water to be diverted from non-restored streams should be identified. The percentage of water to be diverted from non-restored streams should also be disclosed.
- The number of streams and the names of the streams where water is to be diverted should be defined.
- The amount of water to be diverted from partially restored streams should be disclosed.
- The Proposed Action of the Draft EIS states: "The amount of water allowed to be diverted by the Water Lease will be significantly less than the amount diverted for sugar cultivation."
 - o There should be a comparison drawn between the amount of water proposed to be diverted compared to the water diverted for sugar.
- Mahi Pono should be a party to this proposed Draft EIS and water lease since they will be directly benefitting from the diversion of these waters.

- The Draft EIS states: “The Water Lease is to be awarded by public auction.”
 - o The process for public auction and awarding of the lease should be defined.
- The Draft EIS states: “The content and parameters of a watershed management plan related to the proposed Water Lease are unresolved at this time but will be resolved before BLNR can issue the Water Lease.”
 - o The “content and the parameters of the watershed management plan” that has yet to be “resolved” should be outlined and defined.
 - o The specific timing for resolving the parameters of the watershed-management plan should be noted as well. Resolution before BLNR is too vague and too close to awarding of lease.
- The Draft EIS states: “The Water Lease is also subject to the rights of the DHHL to reserve water sufficient to support current and future homestead needs.”
 - o The amount set aside for the DHHL reserve that should be approximated in a specific water demand cannot be provided at this time.
- The use of reclaimed and recycled wastewater was dismissed because of construction of transmission pipelines and potential impacts to native Hawaiian birds. This matter should be explored further using other transmission possibilities, such as tankers.

Councilmember Tamara Paltin:

- The lease was issued so long ago, and with no treaty of annexation, was it ever valid in the first place, and should we even be considering renewing it knowing what we know now?
- To ask for a 30-year lease of a public trust without any reference to timeframes, deliverables, or performance requirements does not seem appropriate.
- Why hasn't the applicant engaged with the County? There have been several invitations to public meetings, letters, and requests for information from the applicant that have been ignored.
- An alternative that has not been explored is the potential to utilize R-1 water from the Wailuku-Kahului Wastewater Reclamation Facility to satisfy irrigation needs now or in the future.

Other discussion:

- Please provide stream-gauge measurements of stream flows upstream and downstream of each diversion for each stream contained within the area of the Draft EIS.
- The DEIS refers to “Base Conditions” as those that occurred during full diversion during sugar cane cultivation.
- Annually ~26% of the Upcountry water supply is being provided by the water contained in this diversion (Kamole and the East Maui Lease areas).
- There are development tunnels that are counted as groundwater, not surface water.
- Climate-appropriate crops are not put forth as an alternative.
- What is the exact area that is going to be served by the water in this diversion (including parcels and CPRs)?
- Is the diverted water going to be supplied to A&B-owned properties and CPRs in the Central Valley?
- The DEIS makes reference to a “watershed plan.” Will this plan be drafted by the applicant, or does the applicant plan to utilize the existing watershed plan that is used by the East Maui Watershed Partnership?
- If the applicant plans to utilize the watershed plan currently used by the East Maui Watershed Partnership, how will downstream issues below the jurisdiction of the EMWP be adequately addressed?

Shay Chan Hodges, Board of Water Supply:

Please see following written testimony, dated October 4, 2019.

paf:kmat:19-335b

EACP Committee

From: Shay Chan Hodges <shay.chanhodges@gmail.com>
Sent: Friday, October 04, 2019 4:27 PM
To: EACP Committee
Cc: Gina M. Flammer; Shane M. Sinenci; Norman Franco; Toni Eaton
Subject: Research Notes from the TIG Committee
Attachments: Temporary Investigative Group- Research.pdf

Aloha:

As requested by Council Member Shane Sinenci's office, I am providing your committee with research that the TIG has conducted so far.

These notes should not be construed as representing conclusions or recommendations of the TIG, and are provided in the public interest for discussion purposes. We look forward to answering questions that you may have regarding our research on this topic.

—shay

Shay Chan Hodges
808.250.6160



Board of Water Supply

Temporary Investigative Group (TIG)

Research Notes, October 4, 2019

This document contains notes from the research conducted by the Board of Water Supply TIG as of October 4, 2019. These notes should not be construed as representing conclusions or recommendations of the TIG, and are provided in the public interest for discussion purposes.

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I. TIG Investigation Background:

Stated Purpose of the Investigation:

Explore the Feasibility of Purchasing and Maintaining the EMI Water Delivery System and Examine Other Alternatives for Ensuring That The People of Maui County Have Authority Over the Delivery of Water, Which is A Public Trust

Attempts to Access Information on Behalf of the Public:

Over the last several months the Maui County Board of Water Supply (BWS) has had several discussions regarding the role of Mahi Pono in the community. In a letter approved unanimously by the Board on September 19, 2019 to be sent to Mahi Pono Operations Manager Grant Nakama, contingent upon approval by Mayor Michael Victorino, the BWS stated the following:

...the [Maui County] Board [of Water Supply] has been extending invitations for Mahi Pono, LLC to attend one of our board meetings since March. We are very eager to have a continued dialog between the Board and Mahi Pono as we continually get testimony submissions and questions from the Maui community on water and land use subjects that are beyond our purview. A dialog between the Board and Mahi Pono can help mitigate any falsely placed frustrations throughout the community that are generated from the perceived lack of transparency from the Board when we don't have the answers to provide them.

As a Board that is dedicated to addressing matters related to safeguarding Maui residents' access to water, we are very interested in developing a clear vision of the island's total water resources and current and future demand. To that end, the Board has recently reached out to all private water purveyors and extended invitations to meetings. These invitations have been extended in order to gain an inclusive picture of the island water resources and delivery options as well as to see if there are untapped opportunities for County and private water purveyors to support one another.

Based on statements made in your July 1 letter and discussions during recent meetings, the Board would still welcome your attendance at our next meeting. If that

cannot be arranged, we would like to extend some follow-up questions regarding Mahi Pono's current and future plans as they relate to water use. Having some answers to these questions that we pose here will help us to communicate with the wider Maui community that has been addressing the Board. For example: In your July 1 letter, you state: **"We have always been committed to supplying the County of Maui – and by extension, the Upcountry Maui community – with water from the EMI system. Having said that, our ability to supply water is 100% dependent on our right to legally access and deliver water."** You further state, "That said, if a [Revocable Permit] is successfully obtained – whether by A&B, EMI or by Mahi Pono – then the County will continue to receive water for the Upcountry Maui community." We appreciate the clarity of this statement but the follow up to this is what will happen if Mahi Pono does not obtain a Revocable Permit to divert water?

"We would greatly appreciate any clarity that Mahi Pono can provide on this list of questions that has been generated by or presented to the Board:

- **If Mahi Pono does not obtain a Revocable Permit, will Mahi Pono be able to still commit to working with the County of Maui to ensure affordable access to water for upcountry Maui residents?**
- **Since the water that flows from the Wailoa Ditch to the Kamole Treatment Plant is maintained by Mahi Pono and EMI, would the lack of a Revocable Permit cease that ditch maintenance and flow?**
- Is Mahi Pono interested in exploring an agreement to provide water that is harvested from its own lands to the County's Kamole Water Treatment plant?
- Is Mahi Pono willing to consider shared management of the Wailoa Ditch and other ditch systems? The current condition of the ditch system and the cost of maintenance/repairs that are needed would help clarify the monetary constraints of providing water to the Kamole Water Treatment plant, and
- If the water leases are obtained by EMI, what portion would go to Mahi Pono lands and what portion would go to remaining A&B lands, many of which are entitled for development? Are there other agreements besides the original sales agreement between Mahi Pono and A&B?"

(Bold added for emphasis, July 1, 2019 Grant Nakama letter and BWS draft letter attached, Appendices 1 and 2)

As noted in the letter, the Board of Water Supply has been reaching out to Mahi Pono since March, 2019. The only communication received from Mahi Pono was the letter referred to above from Mr. Nakama to Director Jeff Pearson, which Mr. Pearson has stated was intended to be shared with the BWS.

As a result of growing concerns about communication and transparency, a Temporary Investigative Committee to explore options for ensuring access to water was approved on July 18, 2019, including the following committee members:

- Water Board Chair Shay Chan Hodges
- Board Member Norman Franco
- Board Member Antoinette Eaton
- Board Member Joseph Aquino

Norman Franco was approved to be Chair of the TIG, Shay Chan Hodges was approved to be Vice Chair.

On July 23, 2019, Joseph Aquino resigned from the TIG due to work responsibilities.

Scope of investigation:

As approved on July 18, 2019, during its investigation, the temporary investigative group (TIG) may:

- a. Conduct interviews and discussions with County of Maui personnel related to the delivery of water to Upcountry and Central Maui.
- b. Conduct interviews and discussions with State of Hawaii personnel related to the delivery of water to Upcountry and Central Maui.
- c. Conduct interviews and discussions with anyone whom the TIG determines has the knowledge, expertise and experience necessary to assist TIG members in increasing their understanding of the scope, operations and maintenance of the EMI Water Delivery System as well as the costs related to the purchase or condemnation of the EMI water delivery system and the cost of its maintenance, including, if necessary, the purchase or condemnation of relevant Mahi Pono lands.
- d. Conduct interviews and discussions with anyone whom the TIG determines has the knowledge, expertise and experience necessary to assist TIG members in increasing their understanding of potential financial mechanisms and organizational structures necessary for the acquisition and governance of the EMI Water Delivery System, in order to promote system sustainability, ensure fiscal integrity, maximize the public welfare and maintain the public trust.
- e. Consult with representatives and stakeholders with diverse expertise relating to the TIG investigation.
- f. Review documents, contracts, studies and other written information relevant to the investigation.

Urgency of Investigation:

Mahi Pono's Intentions per the Draft EIS

On September 23, 2019, the East Maui Irrigation System (EMI) and Alexander & Baldwin (A&B) Draft Environmental Impact Statement (DEIS) for the *Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomano, and Hue/a License Areas*¹, situated at TMK Nos. (2) 1-2- 004:005, 007 (por.), 1-1-002:002, 1-1-001:044, 1-1-001:050, 2-9-014:001, 005, 011, 012, 017 in the Makawao and Hana Districts, on the island of Maui was released **to the public** by the Department of Land and Natural Resources.

The 2,700 page Draft Environmental Impact Statement provides a great deal of information regarding costs and plans, and is available online (see footnote). It is referenced throughout this report as "DEIS" with accompanying page numbers.

This document answers some of the questions posed by the Board. For example:

"Without the Water Lease, even if EMI could find it economically feasible to continue maintaining the EMI Aqueduct System to divert non-governmental water for diversified agriculture in Central Maui, **there may not be enough water to allocate much or any to the MDWS.** This lack of water would exacerbate the effects of drought when other surface water sources are unreliable for the KAP and the Nāhiku, this could eliminate their primary source of water. **Insufficient water delivered to the County through the EMI Aqueduct System could have significant effects on health and safety of those who currently rely on that water delivery.**"

(Bold added for emphasis, DEIS, *Page xiii, Relationship Between Local Short-term Uses of Humanity's Environment and the Maintenance and Enhancement of Long-Term Productivity*)

"The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore **if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate.** Under the Reduced Water Volume alternative, depending on the amount of water authorized under the Water Lease, the MDWS may receive no water from the Wailoa Ditch or some amount up to 7.1 mgd. **The greater the reduction in the amount authorized under the Water Lease, proportionally less water will be available to the MDWS.**"

(Bold added for emphasis, DEIS, *Page 3-5, 3.2 Alternative Analysis 3.2.1 Reduced Water Volume Alternative*)

¹ http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2019-09-23-MA-DEIS-East-Maui-Water-Lease.pdf

The DEIS describes the ownership relationship of EMI, Mahi Pono, and A&B in this way:

“the EMI Aqueduct System is owned and operated by the EMI. EMI was previously a wholly owned subsidiary of A&B. In February, 2019, MP EMI, LLC, became a co-owner of EMI. In addition to becoming the co-owner of the EMI Aqueduct System, as noted above, Mahi Pono acquired former sugarcane and watershed lands, including the Central Maui agricultural fields, from A&B in December 2018. Agricultural operations are centralized under Mahi Pono, LLC.” (DEIS, Page 1-2, The EMI Aqueduct System.)

It is unclear why Mahi Pono, a part-owner of the EMI Aqueduct system, is not a named party on the Draft EIS if Mahi Pono is intending to be a potential lessee. For the purposes of this document, the BWS TIG is referring to EMI/Mahi Pono as jointly responsible for any statements in the Draft EIS.

BWS TIG Obligations to the Public

The Board of Water Supply approved convening a “Temporary Investigative Committee to examine Alternatives for Ensuring That The People of Maui County Have Authority Over the Delivery of Water, Which is A Public Trust” in July, 2019, with no specific deadline for completion.

However, because Mahi Pono has not committed to working with the County of Maui to ensure affordable access to water for Upcountry Maui residents if a revocable permit or lease is not approved, and Mahi Pono/EMI has stated in the Draft Environmental Impact Statement that “if no Water Lease is issued, it is assumed that the delivery of water to the [Maui Department of Water Supply] would terminate,” and given that -- as stated in the DEIS -- “insufficient water delivered to the County through the EMI Aqueduct System could have significant effects on health and safety of those who currently rely on that water delivery,” it is clear to TIG members that actions to reduce reliance on a private company operating the EMI Delivery System represent a public health imperative and need to be taken immediately.

II. How the EMI System Impacts East Maui & Upcountry Maui:

Description of the EMI System Per the Draft Environmental Impact Statement:

The EMI Aqueduct System was constructed in phases, beginning in the 1870s and extending to its completion, as it currently stands, in 1923. It consists of approximately 388 separate intakes, 24 miles of ditches, and 50 miles of tunnels, as well as numerous small dams, intakes, pipes, 13 inverted siphons and flumes. **The EMI Aqueduct System collects surface stream water from approximately 50,000 acres of land (Collection Area), of which approximately 33,000 acres are owned by the State of Hawaii (which includes lands within Nāhiku, Keʻanae, Honomanū and Huelo) (License Area)², and the remaining approximately 17,000 acres which are privately owned by EMI and Mahi Pono.³**

The EMI Aqueduct system starts at Makapipi Stream, in the Nahiku portion of the License Area, with the Koolau Ditch. The Koolau Ditch traverses westward across the Keʻanae License Area and into the Honomanū License Area where it crosses paths with the Spreckles Ditch. This is where streams had multiple diversions at different levels to supply water to the EMI Aqueduct System. Separating higher elevation ditches allows them to maintain the very slight slope necessary to convey flows by gravity over long distances to irrigate higher elevation fields. This avoids the cost of energy required to pump water up from ditches delivering water at lower elevations. As the system continues westward, the Koolau Ditch transitions at the boundary between the Honomanū and Huelo portions of the License Area to the Wailoa Ditch. Makai of the Koolau/Wailoa Ditch, are the Manuel Luis and the Center Ditch. At Waikamoi Stream, the New Hamakua Ditch begins, running parallel to the Wailoa Ditch, but at a lower elevation.⁴

The Spreckles Ditch terminates its mauka segment at Waikamoi Stream, and begins its makai segment at Kaʻaiea Stream, until it converges with the Lowrie Ditch at Niliʻilihaele Stream. Makai of Lowrie Ditch is the Haiku Ditch. At Honopou Stream, the water collected within the License Area by the EMI Aqueduct System exits the License Area. Crossing this western boundary of the License Area in descending elevation are the Wailoa Ditch, the New Ditch, the Lowrie Ditch, and the Haiku Ditch. West of Honopou Stream, the EMI Aqueduct System traverses land that was largely owned by A&B and is now largely owned by Mahi Pono. Additional flows from streams located on this land are diverted by the EMI Aqueduct System until it crosses Maliko Gulch beyond which there are no stream diversions. Crossing Maliko Gulch in descending elevation are the Wailoa Ditch, Kauhikoa Ditch, Lowrie Ditch, and the Haiku Ditch.⁵

² DEIS, Page 1-2

³ DEIS, Page 2-4

⁴ DEIS, Page 2-4

⁵ DEIS, Page 2-4

Current Diversion by the EMI Delivery System As Stated in the Draft EIS:

Currently, the EMI Aqueduct System is only diverting approximately 20 mgd. As a result, very little surface stream water is currently being diverted relative to what would be allowed should the Water Lease be awarded per the Proposed Action. However, the amount of water that may be diverted should the Water Lease be issued is substantially less than the amount that was diverted during normal sugar production. For example, in 2006 it is estimated that the EMI Aqueduct System delivered approximately 156.69 mgd at Maliko Gulch, whereas under the CWRM D&O, it is estimated that the delivery at Maliko Gulch will be approximately 92.32 mgd (Akinaka, 2019).⁶

Description of Community Concerns as Relayed at Focus Group Per DEIS:

According to the DEIS, 4.7.2 Social Characteristics (Page 4-135):

A focus group with residents and farmers from Huelo and Ha 15, 2018 at Hale Akua in Huelo. Most of these participants live in the Huelo watershed area and many live and farm in areas adjacent to streams that are subject to the CWRM's and D&O.

Also, participants said that EMI personnel do not notify residents in the area when the gates open to allow downstream flow. The sudden onrush of stream water has endangered several people who happened to be in/near the stream at that time.

It was noted that, with the closing of the sugar plantation, the low level of maintenance has deteriorated even further given the reduction of EMI staffing to, reportedly, about eight people.

A second major concern with this group is fairness in how they, as a community, have been treated in two ways. First, they reported of the 25 streams in the petition before the CWRM, only three streams in the Huelo watershed were considered kalo streams and designated for full flow. While they agreed with such designation in other watersheds, they felt more streams in their area should have been considered.

Another fairness related concern raised by the group is that residents and farmers in Huelo and streams. Except for those whose properties have deeds allowing stream water access via pipes, most cannot access stream water. They cannot use the water for agriculture or domestic uses. Participants noted that they are off the electricity grid, and they are very interested in using stream flow for hydroelectricity. It was reported that there have been drought times in which residents had to truck in water even though they live next to streams. It was also said that those who were fortunate to have wells on their property share their water with neighbors during these times.

⁶ DEIS, Page 2-8

An issue often raised in the November 2018 focus group sessions was the reportedly poor condition of the EMI Aqueduct System. Interviewees also discussed this topic from the perspective of reducing water losses. They said that the reduction of water losses would reduce the amount of water required for agricultural operations.

These interviewees wanted to know how Mahi Pono will ensure that continued use of the EMI Aqueduct System will be monitored and operated for efficient use of water, which is valued as a public trust, an integral environmental resource, and essential for healthy ecosystems.

Interviewees pointed out that, even though the CWRM D&O restored several streams in East Maui, the social and cultural effects of historical and significant stream diversions have yet to be rectified. This belief was reiterated several times in the November 2018 focus groups and expressed by those interviewed.

While there has been interaction between Mahi Pono and East Maui residents, there still needs to be acknowledgement of past wrongs and a “path to healing” that will allow residents and the new landowner to have a constructive relationship.

Those interviewed understood that Mahi Pono is not responsible for whatever occurred during A&B’s tenure. Mahi Pono inherited a legacy that developed for over one hundred years. Nevertheless, to move forward as an integral part of the Maui community, Mahi Pono needs to “make pono” with East Maui so that everyone can move forward. One person said, “There needs to be apology, repentance and reparation.”

Description of EMI System Per Dept of Water Supply Draft Water Use & Development Plan for Ko`olau and Central Sectors:

Excerpted from the Maui Island Water Use And Development Plan Draft, Part III Regional Plans, Ko`olau Aquifer Sector Area (ASEA)⁷:

Transport of Stream Water from East Maui

The EMI collects surface water from the [Ko`olau] sector and delivers it to Hawaiian Commercial & Sugar’s (HC&S) Central Maui cane fields. Some of the water is also used to generate electrical power. **A relatively small amount of water is used for residential and agricultural use by the DWS for its Upcountry Maui Water Systems, which include the Upper Kula and Lower Kula Water Systems.** The EMI ditch system, which began construction in 1876, is the nation’s largest privately built and operated water system; it consists of approximately seventy-five (75) miles of ditches, tunnels, siphons, flumes, and reservoirs. The Ko`olau Department of

⁷ <https://waterresources.mauicounty.gov/DocumentCenter/View/223/Draft-Plan-Section-III-Chapter-17-PDF?bidId=>

Agriculture’s AWUDP (2004) listed the average delivery at 165 mgd with a delivery capacity of 435 mgd⁸.

Wailoa Ditch	195 mgd
New Hamakua Ditch	100 mgd
Lowrie Ditch	70 mgd
Ha`ikū Ditch	70 mgd
Total Capacity	435 mgd

In drought conditions, both the Lower and Upper Kula systems require supplemental surface water from Kamole Weir and groundwater pumped up to 4,000 feet. Under current agreement with EMI, MDWS receives 12 mgd from the Wailoa Ditch with an option for an additional 4 mgd. During periods of low flow, MDWS will receive a minimum allotment of 8.2 mgd with HC&S also receiving 8.2 mgd, or prorated shares if less water is available. Proposed amended IIFS could restrict Wailoa ditch off stream uses so that less than 7 mgd is available a few days a year. When more than 7 mgd is available under non-drought conditions, the proposed restored amount would come from EMI’s share of the 16.4 mgd. The 2017 Proposal and the current allocation between MDWS and EMI would allow sufficient ditch use for MDWS to meet current demand on the Upcountry system. Under normal flow, exceeding 16 mgd at Wailoa Ditch, and under an allocation of up to 12 mgd for MDWS, projected future demand of 16.4 mgd could also be met. Treatment of more than 6 mgd at the Kamole Weir will require expansion of the water treatment facility and storage construction. Future demand on the Upcountry system as a whole is addressed in the Central aquifer sector report.⁹

Water Use Maui Department of Water Supply Upcountry System

MDWS relies on three surface water sources, one of which is delivered by EMI through the Wailoa Ditch, and the other two through two MDWS higher elevation aqueducts maintained by EMI that transport water to Olinda and Kula, under a contractual agreement originated under the 1973 East Maui Water Agreement and subsequent agreements. MDWS and EMI diverts water from Ko`olau ASEA, conveyed to treatment plant facilities located in Ko`olau ASEA (Piiholo Water Treatment Facility) and the Central ASEA (Olinda and Kamole Weir Water Treatment Facilities)¹⁰.

Water Treatment Facility	Elevation	Conveyance System	Production Capacity	Average Production
Olinda	4,200 feet	Upper Kula Flume	2.0 mgd	1.6 mgd
Piiholo	2,900 feet	Lower Kula Flume	5.0 mgd	2.5 mgd
Kamole-Weir	1,120 feet	Wailoa Ditch	6.0 mgd	3.6 mgd

⁸ Ko`olau WUDP, Page 22

⁹ Ko`olau WUDP, Page 123

¹⁰ Ko`olau WUDP, Page 119

Excerpted from the Maui Island Water Use And Development Plan Draft, Part III Regional Plans, Central Aquifer Sector Area (ASEA):¹¹

The Olinda facility diverts water at the upper Waikamoi Flume from the Waikamoi, Puohokamoa, and Haipuena Streams. Water is stored in two 15 million gallon reservoirs and one 100-million gallon reservoir. The Piiholo facility diverts water from the Waikamoi, Puohokamoa, Haipuena Streams and Honomanu streams into a 50-million gallon reservoir. The Kamole-Weir facility relies on EMI diversions from eastern most Makapipi stream to the western most Honopou stream.

The Upcountry system spans Ko`olau and Central aquifer sectors, ...and serves about 35,200 people. MDWS also serves non potable water to 31 farm lots at the Kula Agricultural Park (KAP). Current water use at the KAP is about 0.4 mgd. About 80 – 90 percent of the delivered water comes from surface water sources and the remaining portion from basal aquifer wells. Haiku Well and Kaupakalua Well are located in the Ko`olau ASEA, Hamakuapoko Well 1 & 2 and Po`okela Well are located in the Central ASEA. The combined surface and groundwater source production capacity is 17.9 mgd, 13 mgd from surface water and 4.9 mgd from groundwater. Accounting for system and operational limitations, and use restrictions from Hamakuapoko wells, the reliable capacity is 9.1 mgd. Current water use averages 7.9 mgd within a range of 6 – 10 mgd.

The DOH divides the MDWS Upcountry System into three separate systems: Upper Kula; Lower Kula and the Makawao systems, although all three are interconnected.

MDWS Makawao/Upcountry Water System (PWS 213)

The MDWS Makawao/Upcountry System, also referred to as Makawao District by the DOH, generally serves the area extending from Ha`iku, Makawao, and Pukalani to Hali`imaile/Pa`ia. The system has 6,680 meters and serves about 28,702 people. The sources of water are primarily from surface water imported from East Maui (80%) and well water (20%) from the Haiku and Makawao aquifers. Surface water from the Wailoa Ditch, generated in the Ko`olau ASEA, is treated at the Kamole Water Treatment Facility (WTF). The facility uses micro-filtration technology and is the largest surface water treatment facility on Maui. It has four booster pumps to move water up to the 2,800 foot elevation, where it can be pumped to the highest service areas at 4,500 feet. Historically, the Kamole WTF is the primary source of water for nearly all of Upcountry during times of drought. There is no raw water storage at the WTF.

MDWS Lower Kula/Upcountry Water System [PWS 247]

The MDWS Lower Kula/Upcountry System, also referred to as Lower Kula District by the DOH, generally serves the area extending from Kula Kai to Omaopio to mid and lower Kimo Drive areas. The system has 1,064 meters and serves about 3,192 people. The sources of water are primarily from surface water imported from East Maui treated at the Piiholo WTF. The facility

¹¹ <https://waterresources.mauicounty.gov/DocumentCenter/View/221/Draft-Plan-Section-III-Chapter-15-PDF?bidId=>, Page 45, 46

uses direct filtration technology. Granular activated carbon and air stripping treatments were added in 2015 to reduce disinfection-byproducts in the water supply. The system can be supplemented with groundwater from Makawao aquifer.

MDWS Upper Kula/Upcountry Water System [PWS 215]

The MDWS Upper Kula/Upcountry System, also referred to as Upper Kula District by the DOH, generally serves the area extending from Upper Kula to Kula Highlands to Kama`ole to Upper Olinda-Piihola to Kula Glen to Ulupalakua-Kanaio. The system has 2,346 meters and serves about 7,038 people. The source of water is primarily from surface water from Waikamoi treated at the Olinda WTF. The facility uses micro-filtration technology. Disinfection is provided by anhydrous ammonia, blended with chlorine to form chloramines. Water is stored in 30 MG Waikamoi Reservoirs and the 100 MG Kahakapao Reservoirs.

Future Water Use MDWS Upcountry System

Based on growth rates and the socio-economic forecast referenced in the Maui Island Plan, the population Upcountry is projected to grow by about 8,424 to a total of about 43,675 people by 2030. Projected water demand for the base, low and high growth scenarios are shown below.

Water losses due to leaks, seepage, evaporation and other inefficiencies in the treatment, conveyance, distribution and storage of water range widely depending on storage and source transmission system age, length, type and many other factors. To account for water losses and determine source needs for Upcountry, water produced, rather than water billed is used as basis to determine source needs. For the Upcountry system, water losses average 20%.¹²

Table 16-56 Projected Consumption and Production MDWS Upcountry District System, Base, High and Low Scenarios (mgd)

	2014	2035 Base	2035 High	2035 Low
Consumption	6.26	7.02	7.57	6.42
Production	7.61	8.53	9.20	7.80

*Excludes Kula Ag Park

Upcountry Meter List

In 1993, the MDWS determined that the existing Upcountry water system was found to have insufficient water supply developed for fire protection, domestic and irrigation purposes to add new or additional water services without detriment to those already served.

¹² Ko`olau WUDP, Page 121

MDWS created a list of Upcountry properties, by date of application, who requested new and additional water service. In 2002, an administrative rule “Water Meter Issuance Rule for the Upcountry Water System”, Title 16, Chapter 106 was created. The rule outlined the procedure for processing applications for water service. New applicants were continually added to the list until provisions were codified in 2013 so that no new applications were accepted after the 2013 provisions became effective. A 2015 ordinance provided certain fire protection exemptions. Still, about half of meter offers are declined presumably due to the expense of required system improvements. The Priority List is estimated to represent an additional 3.7 – 7.3 mgd demand on the Upcountry system as a whole. There are about 1,800 requests for 4,300 meters (excluding those that did not accept a reservation offered, accepted a reservation, or where a meter was installed) for 1,900 dwelling units and a nominal number of commercial units. About two-thirds of the remaining requests are located outside designated growth areas. There remains uncertainty over the number and timing of new meters as well as occupancy.

Sources for requests in Haiku are primarily served by basal wells with sufficient backup capacity to reliably add new services. Sources for requests on the Lower and Upper Kula subsystems are East Maui streams in the Waikamoi area that are subject to Instream Flow Standards and vulnerable to drought. Groundwater from Po`okela Well in Makawao aquifer can supplement the Lower and Upper Kula subsystems. There remains uncertainty over the number and timing of new meters as well as occupancy.

Providing reliable capacity to satisfy the Priority List could be accomplished in alternative ways:

1. Develop basal wells to provide reliable capacity and assume significantly higher cost of service due to energy required to pump up to 4,000 foot elevation
2. Separate the Priority List by service area and source, so that subsystems with adequate and reliable capacity are prioritized over subsystems reliant on surface water.
3. Public-private partnerships to develop source and infrastructure that benefit end users of the same subsystem.

Altering the priority list processing would require code changes and would without doubt cause opposition by applicants that would not benefit from such changes. The recommended strategy is assessing the various options of restructuring and processing the list while moving forward with needed source development.

Strategy #2: Assess alternative options to restructure and process the existing Upcountry Meter Priority List to improve processing rate and adequate source development. Lead agency is MDWS.¹³

¹³ Central WUPD, Page 106-107

II. Strategies for Creating and Conserving Fresh Water Capacity

Hawaii Fresh Water Blueprint for Action:

Excerpted from website:¹⁴

Hawai'i has been blessed with consistent rainfall, advantageous geology, and high-quality drinking water stores for centuries. **Recent findings, however, have raised concern about long-term fresh water security for our Islands. University of Hawai'i and other scientists have documented troubling trends including reduced rainfall, higher evaporation rates, and declining stream flows in recent decades.** These findings, coupled with the demand of an ever-increasing population, suggest that Hawai'i is entering an era of fresh water uncertainty.

The Hawai'i Fresh Water Initiative (Initiative) was launched in 2013 to bring multiple, diverse parties together to develop a forward-thinking and consensus-based strategy to increase water security for the Hawaiian Islands. Organized by the independent, nonprofit Hawai'i Community Foundation (HCF), the Initiative relied on a blue ribbon advisory panel of individuals (Hawai'i Fresh Water Council or Council) with deep knowledge of water and a collaborative spirit to articulate a vision for a more secure and sustainable water future based on shared values, and shared sacrifice. This Blueprint is the result of their work, and provides Hawai'i policy and decision-makers with a set of solutions that have broad, multi-sector support in the fresh water community that should be adopted over the next three years to put Hawai'i on a path toward water security. The Blueprint also builds on the good work, findings, and recommendations over the years by preceding stewards of Hawai'i's most important resource.

Goal: The Fresh Water Council distilled nearly two years of research and analysis into a single goal: creating 100 million gallons per day (mgd) in additional reliable fresh water capacity for island by 2030.

To achieve the ambitious goal of 100 mgd in additional fresh water capacity, the group outlined three aggressive water strategy areas and individual targets that the public and private sectors must work together to achieve by 2030:

1. **Conservation:** Improve the efficiency of our population's total daily fresh groundwater water use rate by 8% from the current 330 gallons per day/person to 305 gallons per day/person. By 2030, this goal will provide 40 mgd in increased water availability.

¹⁴ https://www.hawaiicommunityfoundation.org/file/cat/Fresh_Water_Blueprint_FINAL_062215_small.pdf, Page 3

2. **Recharge:** Increase Hawai'i's ability to capture rainwater in key aquifer areas by improving storm water capture and nearly doubling the size of our actively protected watershed areas. By 2030, this goal will provide 30 mgd in increased water availability.
3. **Reuse:** More than double the amount of wastewater currently being reused in the Islands to 50 mgd. By 2030, this goal will provide an additional 30 mgd in increased water availability.

Initiative Principles¹⁵

The following shared principles were adopted by the Council as they forged consensus to adopt the policy recommendations listed in this section.

- *Water is a complex issue that demands a comprehensive set of solutions.**
- *Solutions will come from many different sectors, and a good solution in one geographic area may not be appropriate for another area.
- *Solutions should focus on financial sustainability and cost effectiveness.**
- *Better information and access to accurate data facilitates good decision-making.**
- *Entering an era of climate unpredictability argues for more aggressive gathering and monitoring of water data than currently occurs.**
- *"Applied" and/or "targeted" education efforts are more effective than general outreach and awareness campaigns.
- *Water is as important to our economy and culture as it is to our ecology.**
- *The current price of water in Hawai'i does not reflect its "true cost."**
- *Any successful supply solution must provide for Hawai'i's broad spectrum of water uses.**
- *Hawai'i is better-positioned than many other geopolitical bodies to meaningfully address long-term fresh water sustainability.
- *Native Hawaiian cultural traditions place a high value on water and can provide guidance on how best to steward water.**
- *Public Trust doctrine and our state water code provide an adaptable framework.**
- *There is an urgency to the fresh water supply issue that is not widely evident to the public.**
- *Costs to address fresh water supply will rise with each year of delay.**
- *The nexus between water and energy is clear and compelling.**

¹⁵ Fresh Water Blueprint, Page 13

Maui Strategies for Addressing Impacts of the Climate Crisis:

From the Central ASEA Draft Water Use and Development Plan¹⁶:

Issue and Background: Data and research suggest that Hawai'i should be prepared for a future with a warmer climate, diminishing rainfall, declining stream base flows, decreasing groundwater recharge and storage, and increased coastal groundwater salinity, among other impacts associated with drought. Reliance on surface water will become more uncertain in a future of longer droughts and varying rainfall. No streamflow projections are available for the coming century but projections include a decline in base flow and low flows, with stream flows becoming more variable and unstable (flashy), especially in wet years. Groundwater recharge decreases in drought but local impact from climate change has not been projected to date.

The Central ASEA is especially vulnerable due to water resources used:

- Upcountry region and agriculture dependent on surface water as primary resource.
- Irrigation and other non-potable wells in Paia and Kamaole aquifer coastal areas are subject to sea-level rise

In consistency with the *Climate Change Adaptation Priority Guidelines*, water purveyors should increase resilience and reduce vulnerability to risks related to climate change. Chapter 12 Island Wide Strategies in this plan include the following strategies that can mitigate impacts from climate change:

1. Continue Maui County financial support for watershed management partnerships' fencing and weed eradication efforts (Chapter 12.3, Strategy#1). The Central ASEA is heavily dependent on forested watersheds in the Wailuku and Ko'olau hydrologic units to provide fresh water supplies.
2. Demand side conservation measures, such as water conserving design and landscaping in new development, incentives for efficient irrigation systems, landscape ordinance and promoting xeriscaping in dry areas will increase tolerance for prolonged droughts. (Chapter 12.3 Strategies # 13, 14, 15, 17)
3. Promote alternative resource incentives, such as greywater systems and rainwater catchment to supplement conventional resources. Incentives for green infrastructure and use of alternative water sources are needed to ensure such upfront investments in new development. (Chapter 12.3 Strategies# 20 and 21)
4. Diversify supply for agricultural use to increase reliability. Under extended droughts and low stream flows, diversified agriculture on HC&S lands will compete with priority public trust uses for surface water. Planned extension of R-2 recycled water from the Kahului WWTF to HC&S fields can supplement groundwater from the Central aquifer sector. (Chapter 12.3 Strategy #51).

¹⁶ Central WUDP, Page 124

5. Expand requirements for new development to connect to recycled water infrastructure, promote closer collaboration between MDWS and MDEM to utilize Drinking Water State Revolving Funds to maximize recycled water use. (Chapter 12.3 Strategies # 61 and 62)
6. Explore and promote opportunities for large volume stormwater runoff for agricultural irrigation. (Chapter 12.3 Strategy # 66)

From the Ko`olau ASEA Draft Water Use and Development Plan:

The concerns regarding climate change in the Ko`olau aquifer are more general. References include:

- Improving the understanding of the concepts of "precautionary planning" to reduce and adapt to the effects of drought and climate change upon water resource availability and quality is important. ¹⁷
- Understanding potential impact of climate change adds to uncertainty in long-term groundwater availability. The primary responsibility to determine potential impacts on water resource availability lies with the State CWRM who in turn relies on studies and predictions by the scientific community and other agencies. Water purveyors need guidance how to mitigate and adjust to potential changes in groundwater availability. ¹⁸
- Strategy #3: Support collaborative hydrogeological studies to inform impact from climate change and future well development on groundwater health for Haiku and Honopou aquifers. ¹⁹

Upcountry Conservation:

The Upcountry region has experienced voluntary and mandatory conservation measures for decades, primarily in dry season when the MDWS Upcountry System reservoir levels are low. Reliance on surface water and constraints in developing additional groundwater causes the system to be vulnerable to droughts.

Demand Side Conservation Measures

Demand side conservation strategies recommended in Section 12.2 that would target outdoor uses of potable water include comprehensive water conservation ordinance to include xeriscaping regulations, landscaping and water efficient irrigation system incentives.

¹⁷ Ko`olau WUDP, Page 4

¹⁸ Ko`olau WUDP, Page 104

¹⁹ Ko`olau WUDP, Page 105

In evaluating cost-effectiveness, MDWS compared the costs to develop and deliver new sources of water to meet future demand with the savings attributed to conservation.

A preliminary analysis of the proposed conservation measure portfolio outlined in Section 12.2 shows that doubling current investments (MDWS annual FY14 – FY17 conservation budget, excluding leak detection is \$170,000) would result in net capital and operational savings. The potential for a net savings is expected for both the MDWS Central System and the Upcountry System due to the need for new source development.

Recommended demand side conservation measures at all levels and type of use for public water systems are outlined in table 13-1 (strategies # 10 – 25). There is an opportunity to design and implement conservation measures in new housing development throughout planned growth areas. The recommended conservation Strategies #17, 22 and 25 outlined in Table 13-1 are implemented in the design and build phase and are especially appropriate in planned growth areas:

- Revise county code to require high efficiency fixtures in all new construction. Develop a comprehensive water conservation ordinance to include xeriscaping regulations.
- Revise County Code: Water conserving design and landscaping in new development (xeriscaping targets dry areas).
- Revise County Code and/or incentivize water- efficient building design that integrates alternative sources (grey water, catchment).

Supply Side Conservation Measures

The sustainable and efficient use of water resources, as well as the capacity and integrity of water systems, can be improved by accounting for water as it moves through the system and taking actions to ensure that water loss is prevented and reduced to the extent feasible.

A water audit provides a data driven analysis of water flowing through a water system from source to customer point-of-service and is the critical first step in determining water supply efficiency and responsible actions to manage and reduce water loss consistent with available source, operational and financial resources. Public water systems serving a population of 1,000 or more and those within water management areas regardless of population served are required to submit annual water audits beginning July 1, 2020. Except for the MDWS systems, there are no large public water systems in the aquifer sector subject to the requirement. The fiscal year 2017 audit for the Upcountry system revealed that apparent water losses are often due to data gaps between the amount of water withdrawn at the source, treated, stored and billed. The results will guide MDWS data collection, maintenance and repair programs.

Input from the WUDP public process and issues identified in the community plans relate to water shortages and conservation²⁰:

- Reliance on surface water Upcountry makes the system vulnerable to drought conditions
- Voluntary and mandatory water use restrictions imposed on residential and agricultural users during droughts often negatively impact the productivity of farmers
- Promote conservation of potable water through use of treated wastewater effluent for irrigation.
- Reuse treated effluent from the County's wastewater treatment system for irrigation and other suitable purposes in a manner that is environmentally sound.
- Provide incentives for water and energy conservation practices.
- Promote energy conservation and renewable energy.
- Incorporate drought-tolerant plant species and xeriscaping in future landscape planting.

Qualitative criteria to evaluate and measure resource strategies against this planning objective include:

- Per capita water use decreased
- Potable and irrigation systems water loss decreased
- Community water education increased
- Incentives for water conservation increased
- Renewable energy use increased

East Maui Watershed Management:

East Maui watersheds are predominately vegetated by native Hawaiian rainforest. The plants there evolved over millions of years into the most efficient water collection system for our island's geography. It works in layers – tall 'ōhi'a and koa trees provide a canopy for shorter trees, while shrubs and ferns fill in underneath, and a thick layer of mosses and leaf litter complete the floor. These layers act like a giant sponge, slowing down heavy raindrops and soaking up water for slow release into underground aquifers. Even during droughts, our watersheds can produce water, pulling water out of the clouds by collecting fog drip. This uniquely evolved, specialized forest is the key to Maui's healthy water supply harbor endemic and rare native plant and bird species. The main threats to the native forest and ecosystems are habitat loss and alterations due to feral ungulates (pigs, deer, goats) and invasive plants. These are detrimental both to biodiversity and water supply.

Active management to ensure protection and preservation of these important watershed lands occur on federal, state and community levels.²¹

²⁰ Central WUDP, Page 102

Central Draft Water Use and Development Plan²²:

Issue and Background: Most land within this hydrologic unit are water resource “import” areas, rather than “export” areas in the sense that population and agricultural operations rely on water resources from adjacent watersheds. Watershed management in both types of watersheds are important. The Department of Land and Natural Resources has identified “Priority Watershed Areas” which are areas of highest rainfall and resupply, based on climatic conditions that provide high recharge and fog capture. Currently protective measures are focused in these priority areas above the 3,000 foot elevation with direct benefit to makai lands and the nearshore environment. The East Maui Watershed Partnership (EMWP) manages most of the forested upper critical watersheds of Ko`olau aquifer sector. Ongoing efforts include ungulate control through fence construction, retrofitting and regular trap checks weed management, monitoring, and human activities management through outreach and education. On the dry side of Haleakala, the Leeward Haleakala Watershed Restoration Partnership (LHWRP) works towards restoring the disturbed landscape where once dryland forests captured rain and fog that recharged the freshwater supply. The Maui Invasive Species Committee (MISC) targets pest animals and plant species to prevent their influx and establishment in the mauka critical watersheds. Their efforts occur throughout the Central ASEA in rural and agricultural regions as needed.

The Makawao-Pukalani-Kula Community Plan states as objectives:

- *Recognize the importance of the forested watershed areas and that their health and well-being are vital to all the residents of the Upcountry area.*
 - *Explore a comprehensive reforestation program to increase and catch more rainwater for the Upcountry area.*
-

The objectives support the ongoing efforts by EMWP, LHWRP and MISC. State and county agencies as well as private purveyors can provide financial support and participation in watershed protection partnerships and reforestation programs. Strategies for watershed management in Ko`olau is addressed in the Ko`olau ASEA Report, Chapter 16.8.1. Management efforts on leeward Haleakala is addressed in the Kahikinui ASEA Report, Chapter 18.8.1

²¹ Ko`olau WUDP, Page 99

²² Central, WUDP, Page 100, 101

Nexus Between EMI Delivery System & East Maui Watershed:

<p>A detailed environmental and cost analysis of Watershed Management and Restoration building on the Water Use and Development Plan is needed.</p>	<p>In order to ensure optimum implementation of any recommendations, agreements with landowners and considerations of land purchases would be required.</p>
<p>The Hawaii Fresh Water Initiative calls for investment in watershed protection statewide as a crucial step for water security. Consistent, reliable public funding is the most difficult and important part of watershed protection and storm water capture.²³</p>	<p>One recent University of Hawai'i Economic Research Organization (UHERO) study estimated that investing \$43.2 million in watershed restoration work in the Ko'olau mountains could result in over \$900 million in actual realized water value for O'ahu.²⁴</p>
<p>Current commitments to management and restoration by Maui County are extremely low.</p> <p>Watershed Partnership Annual Contributions?</p>	<p>2020 Budget: less than \$2 million (\$1 million according to WUDP)</p>
<p>Various computer climate models predict divergent precipitation futures for Hawai'i, although there seems to be common agreement that our rainfall future will be increasingly extreme and inconsistent. There is also high variation throughout the islands in terms of each watershed's ability to catch and hold water. In sum, the question is not whether Hawai'i will have water in the future, but rather will Hawai'i continue to have an affordable, predictable supply in the places we need at the times that we need for a growing population?"²⁵</p>	<ul style="list-style-type: none"> • Rainfall in Hawai'i decreased by 18% over a 30 year period in Hawai'i from 1978 to 2007. • Annual "tradewind days" have declined 28% from 291 days in 1973 to 210 days in 2009, resulting in less rain and recharge of aquifers. • Hawai'i has been feeling the impact of prolonged drought. In the summer of 2013, 75% of Hawai'i's land area was "Abnormally Dry." • Groundwater provides 99% of the state's domestic water use and in several key areas groundwater levels have been dropping. • Increased temperatures associated with global warming mean increased evaporation for surface water and soil moisture. <p>Certain invasive plant and tree species have higher evapotranspiration rates than native species in Hawai'i. Hawai'i forests are increasingly encroached on by invasives.²⁶</p>
<p>There are no specific commitments to Management and Restoration of the East Maui Watershed by Mahi Pono/EMI in the Draft EIS</p>	<p>Page 2-2, DEIS: Under the Proposed Action, it is anticipated that EMI and/or Mahi Pono will continue to pursue watershed management activities."</p>
<p>Commitments to providing water for taro farming are crucial to the care of the watershed.</p>	<p>For centuries after their arrival from Polynesia, Native Hawaiians divided the land into <i>ahupua'a</i> — subdivisions running from the ocean to the mountains, roughly defined by their watersheds. Fresh water flowed through complex ditch systems called <i>'auwai</i>, often toward taro <i>lo'i</i>, where it supported the cultivation of hundreds of variety of taro—a dietary mainstay for the population. Intact native forests in the <i>wao akua</i>, along</p>

²³ Fresh Water Blueprint, Page 13

²⁴ Fresh Water Blueprint, Page 7

²⁵ Fresh Water Blueprint, Page 5

²⁶ Fresh Water Blueprint, Page 5

	with diversion systems of 'auwai and lo'i in the lowland areas slowed down water down and increased aquifer recharge in each watershed. ²⁷
8. State Department of Agriculture is providing \$4.5 million in 2020 to support local agriculture (currently a one-time allocation).	Supports the plans, design and construction for to rebuild auwai in Ke'anae-Wailuanui and similar rural water infrastructure projects, which indirectly helps the watershed by supporting lo'i (see above).

General Resource Management:

Planning objectives related to resource management identified in the WUDP update public process include:²⁸

- Watershed protection and its prioritization, including invasive alien plant control, ungulate control, and reforestation via watershed partnership programs
- Maintaining access to lands for gathering, hunting and other native Hawaiian traditional and customary practices
- Improving the understanding of the concepts of "precautionary planning" to reduce and adapt to the effects of drought and climate change upon water resource availability and quality
- Consultation and coordination with Native Hawaiian community/moku and local experts on resource management and invasive species removal

The Hāna Community Plan reflects regional issues expressed at the community WUDP meetings. Policies related to water resource management include:

- Protect, preserve and increase natural marine, coastal and inland resources, encouraging comprehensive resource management programs
- Ensure that groundwater and surface water resources are preserved and maintained at capacities and levels to meet the current and future domestic, agricultural, commercial, ecological and traditional cultural demands
- Recognize residents' traditional uses of the region's natural resources which balance environmental protection and self-sufficiency
- Discourage water or land development and activities which degrade the region's existing surface and groundwater quality
- Encourage resource management programs that maintain and re-establish indigenous and endemic flora and fauna
- Protect, restore and preserve native aquatic habitats and resources within and along streams

²⁷ Fresh Water Blueprint, Page 9

²⁸ Ko'olau WUDP, Page 99

- Ensure that the development of new water sources does not adversely affect in-stream flows
- Increase water storage capacity with a reserve for drought periods.
- Improve the existing potable water distribution system and develop new potable water sources prior to further expansion of the State Urban District boundary or major subdivision of land in the State Agricultural or Rural Districts.
- Ensure adequate supply of groundwater to residents of the region before water is transported to other regions of the island.

Key issues for the Koʻolau region were identified in public meetings held in Hāna over 2016. Community concerns overlap with those of the Hāna aquifer sector and relate to watershed management and participation by the local community; maintenance of traditional resource management using the ahupuaʻa system and ensuring that traditional and customary practices are safe guarded. Community members state that younger generations are returning to Koʻolau and Hāna to establish taro loʻi. Other key issues for the region focus on providing affordable water for future needs, providing for taro loʻi and other public trust uses during droughts, and managing resources in a sustainable way.

Due to resource interdependencies, East Maui (Hāna and Koʻolau ASEAs) community concerns are also related to the primary concerns of Makawao-Pukalani-Kula residents, which center on the limited development of water resources and a distribution system to meet the needs of the region. The proper allocation of water resources is considered essential to, in order of priority:

(1) preserve agriculture as the region’s principal economic activity, promote diversified agricultural activities, and effectively encourage the development of Department of Hawaiian Home Lands (DHHL) parcels; and

(2) However, water use in the Upcountry region is recognized as having impacts on the streams of East Maui and the agricultural activities of the central valley.

A comprehensive water management strategy must be developed to strike a balance between the various interests and accommodate environmental, agricultural and on Upcountry and East Maui water issues as they relate to each other and the Central Maui ASEA.²⁹

²⁹ Koʻolau WUDP, Page 98

III. Native Hawaiian Land & Water Rights

Ko`olau Water Use and Development Plan, DHHL Maui Island Plan:

The Hawaiian Homes Commission adopted its Maui Island Plan as the overarching planning document in 2004. The Department of Hawaiian Homelands (DHHL) East Maui planning region encompasses three tracts totaling 985 acres: Ke`anae, Wākiu, and Wailua. All three tracts are within the Hāna Community Plan designated Area. However, only Ke`anae (150.6 acres) and Wailua tracts are within the Ko`alau ASEA, covering 242 acres the State Land Use Commission has mostly zoned Agriculture, with a very small percentage zoned Conservation. The County zoning and Community Plan designations for the lands is Agricultural. For the Ke`anae tract, Two acres of community use is proposed on the makai property, and 32 three- acre agricultural lots are proposed on 57 acres of the mauka property. The chosen DHHL project for the Wailua tract proposes 28 acres of subsistence agricultural use, 52 acres of General Agricultural use and 10 acres of Conservation.³⁰

Central Water Use and Development Plan DHHL Water Resources:

Due to the extensive Department of Hawaiian Homelands (DHHL) land holdings and their plans to further develop the area for Native Hawaiian habitation and farming activities; adequate water supply is becoming increasingly important for Native Hawaiians to resettle and facilitate their cultural practices in the area. DHHL lands are occupied by Native Hawaiians who are assumed to live the full-range of traditional Native Hawaiian cultural practices based on their ability to implement the knowledge of their heritage. Upcountry Maui (Keōkea/Waiohuli, Ulupalakua, Kualapa) has over 6,000 acres of DHHL lands.

The Makawao-Pukalani-Kula Community Plan section, "Identification of Major Problems and Opportunities of the Region Problems," cites "limited development of water resources and distribution system to meet the needs of the region as a primary concern," and notes that "The proper allocation of water resources is considered essential to encourage the development of Department of Hawaiian Home Lands (DHHL) parcel."³¹

Keōkea/Waiohuli – Priority Tract

According to the DHHL Maui Island Plan, with adequate water and funding, this area has the potential to be the largest homestead region on Maui. Over 6,000 acres of DHHL land are located below Kula Highway on the slopes of Haleakala. A 70-unit farm lot subdivision at Keōkea was planned prior to the *Maui Island Plan*. A second phase of 343 residential lots can be implemented using allocations from the existing water system if planned in the mid-section of the tract between existing residential lots and the Keōkea farm lots. An additional 768

³⁰ Ko`olau WUDP, P. 43

³¹ Central WUDP, Page 30

residential lots are proposed for future residential homesteads at Waiohuli pursuant to the development of an on-site production well.

Kualapa

Located along Kula Highway south of Ulupalakua near Kanaio, this tract does not have immediate development potential due to infrastructure constraints. The water system is old and undersized and is not able to accommodate any further growth; and extensive off-site improvements would be needed to support residential development.

Kula Residence Lots

The Kula Residence Lots subdivision is located in the northern portion of the Keōkea-Waiohuli homestead area (yellow on the accompanying map). The subdivision will include a total of 420 lots developed to Rural Residential half-acre standards.

Future DHHL Development

DHHL has long range conceptual plans for about 1,100 more residential lots in the area below the latest developments. The future subdivisions are envisioned to include community facilities, a school site, parks, archaeological preserves, and open space. These future plans are dependent on the development of water, wastewater, road improvements, and funding. The timeframe for these developments is beyond 2020.

Excerpts from Draft EIS Relating to DHHL Lands:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for K kea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its K kea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.³²

IV. Considerations RE: Purchasing & Maintaining EMI System

The Maui County Board of Water Supply Temporary Investigative Committee has conducted interviews and discussions with various individuals in the community with knowledge, expertise and experience who have increased TIG members' understanding of the scope, operations and

³² DEIS, Page 2-4

maintenance of the EMI Water Delivery System as well as the costs related to the purchase or condemnation of the EMI water delivery system and the cost of its maintenance, and the purchase or condemnation of relevant Mahi Pono lands.

The BWS TIG has also reviewed various documents related to the above.

General Considerations

In response to community research, the BWS TIG learned that there are many members of the community who have been considering the option of purchasing the East Maui water delivery system and/or watersheds and had already begun their own analyses prior to the establishment of the TIG.

For Example the East Maui H2O Roundtable discussed the following:

<p>East Maui H2O Roundtable, convened by Sustainable Living Institute of Maui, June 2018, Break-out group on Financing strategies for East Maui Watershed and Water systems.</p>	<p>Participants: <i>ALLISON COHEN (Nature Conservancy)</i> <i>GLADYS BAISA (DWS DIRECTOR at the time)</i> <i>CARL FREEDMAN (economic analyst on water and energy policy)</i> <i>DAVID FISHER (Economist and business advisor)</i> <i>CAROL REIMAN- A&B Public relations head</i> <i>WARREN WATANABE- maui farm bureau</i> <i>LUCIENNE DE NAIE - Sierra Club Maui/ east Maui resident</i> <i>HUGH STARR- ag property specialist/ water researcher</i></p>
<p>Price tag depends on needed systems improvements and community priorities. Costs associated with watershed and ditch system (not County water treatment systems) include:</p> <ul style="list-style-type: none"> • <i>ditch system upkeep and maintenance</i> • <i>watershed management and restoration activities</i> • <i>monitoring gear / programs</i> • <i>alternative water sources</i> • <i>needed studies and plans</i> • <i>system modifications/ expansions</i> • <i>OHA/DHHL share</i> 	
<p>Funding Sources:</p> <ul style="list-style-type: none"> • System users • Private sector funding • International & local bonds • Social impact investors interested in : <ul style="list-style-type: none"> • sustainability • education • carbon offset • adopt a tree programs 	<ul style="list-style-type: none"> • NGO investors (charitable foundations) • Corporate sponsors • County • Federal appropriations (climate impact mitigation funds?) - USFWS/ USDA/ EPA- GRANTS • USGS programs and projects • State - Legislature plus CWRM/ OHA/ DHHL
<p>Determine pricing structure for portion of funding coming from potential water system users:</p> <ul style="list-style-type: none"> • DWS: potable system & ag parks 	

- A&B or successor- farming leases /hydropower
- taro farmers/ kuleana farmers
- Hui partition holders in Huelo
- Maui Gold pineapple
- Ranches
- Recreational users PUC would need to regulate the prices set & PUC bases decision on cost, not “value”

SIDEBAR: AG WATER RATES

- Charging 3 cents per 1000 gal , 100 mgd would cost \$1 million
- Upcountry farmers currently pay \$1.10/ 1000 gal at the County Ag park
- State irrigation district (hawaii island) charges 20 cents/ 1000 gal.

Condemnation Requirements (Per Maui County Corp Counsel)

In an August 2, 2017 transmittal from then-Corporation Counsel Pat Wong to then-Council Member Elle Cochran, advices is provided on the process for initiating condemnation proceedings by the County of Maui. Mr. Wong cites the following sections of the Hawaii Revised Statutes (HRS):

§46-1.5 (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so;

§46-61 Eminent domain; purposes for taking property. Each county shall have the following specific powers: To take private property for the purpose of establishing, laying out, extending and widening streets, avenues, boulevards, alleys, and other public highways and roads; for pumping stations, waterworks, reservoirs, wells, jails, police and fire stations, city halls, office and other public buildings, cemeteries, parks, playgrounds and public squares, public off-street parking facilities and accommodations, land from which to obtain earth, gravel, stones, and other material for the construction of roads and other public works and for rights-of-way for drains, sewers, pipe lines, aqueducts, and other conduits for distributing water to the public; for flood control; for reclamation of swamp lands; and other public uses within the purview of section 101-2 and also to take such excess over that needed for such public use or public improvement in cases where small remnants would otherwise be left or where other justifiable cause necessitates the taking to protect and preserve the contemplated improvement or public policy demands, the taking in connection with the improvement, and to sell or lease the excess property with such restrictions as may be dictated by considerations of public policy in order to protect and preserve the improvement; provided that when the excess property is disposed of by any county it shall be first offered to the abutting owners for a reasonable length of time and at a reasonable price and if such owners fail to take the same then it may be sold at public auction.

§46-62 Eminent domain; proceedings according to chapter 101. The proceedings to be taken on behalf of the county for the condemnation of property as provided in section 46-61, shall be taken and had in accordance with chapter 101, as the ame may be applicable.

§101-13 Exercise of power by county. Whenever any county deems it advisable or necessary to

exercise the right of eminent domain in the furtherance of any governmental power, the proceedings may be instituted as provided in section 101-14 after the governing authority (county council, or other governing board in the case of an independent board having control of its own funds) of the county has authorized such suit by resolution duly passed, or adopted and approved, as the case may be. The resolution, in the case of the city and county of Honolulu or an independent board thereof, shall, after its introduction, be published in a daily newspaper with the ayes and noes, once (Sundays and legal holidays excepted) at least three days before final action upon it, and in the case of any other county or an independent board thereof, be published in a newspaper with the ayes and noes, at least one day (Sundays and legal holidays excepted), before final action upon it.

§101-14 Plaintiff. The attorney general of the State may, at the request of the head of any department of the State, or as otherwise provided by law, institute proceedings for the condemnation of property as provided for in this part. Any county may institute proceedings in the name and on behalf of the county for the condemnation of property within the county for any of the purposes provided in this part which are within the powers granted to the county.

Section 4-2(7) of the Revised Charter of the County of Maui (1983) states: "Resolutions authorizing in eminent domain shall be adopted as provided by law."

Maui County Code Section 3.44.O15(E) states: "The council may authorize proceedings in eminent domain by resolution. Any proceedings so authorized are subject to the requirements of chapter 101, Hawaii Revised Statutes."

The remainder of HRS chapter 101 sets forth the process for completing condemnation proceedings. In summary, after the Council passes a resolution, the County is required to file a complaint in Circuit Court and provide notice of the action to all owners of the property. The County will be required to compensate the property owners for the property taken, and if the parties cannot agree on compensation, the Court will hold a trial on the issue.

Prior to drafting the resolution, the County should obtain a title report for the property, as well as an appraisal of the property's value. The appraised value of the property should be included in the County's budget. The resolution itself should authorize the Department of Corporation Counsel to initiate condemnation proceedings, specifically describe the property, state the public purpose proposed for the property, and authorize Corporation Counsel to deposit money equivalent to the estimated value of the property to obtain immediate possession, if applicable. It is also advisable for the Council work closely with the County department that will be responsible for oversight of the property throughout the condemnation proceedings.

In your request, you discuss the possibility of condemnation of the structures but not the land within the proposed property. Owning the structures without owning the land would limit the County's control of the land to effectuate the purpose of the condemnation.

Please see Appendix 5 for a copy of the transmittal.

In an email request from Board of Water Supply Chair and TIG Vice Chair Shay Chan Hodges, Corporation Counsel Caleb Rowe, stated the following:

“In general, when a condemnation occurs, the governmental body undertaking the condemnation must pay “fair market value” of the property taken. The Hawaii Supreme Court in its decision in Honolulu v. Collins (attached) specifically states that the value of use of water derived from the land shall be considered in a determination of fair market value (“this land has a special value as water producing land. The owners, therefore, are entitled to compensation according to its value as such.”)

The calculation of damages would be a little weird for this one since the system is technically on state land and the rights to the water are entirely speculative (dependent on the RP from BLNR). Still, some consideration of the value of water would likely be deemed appropriate in a determination of fair market value.”

See Appendix 6 for a copy of Honolulu vs. Collins.

Fair Market value of the EMI System

Market Value in 2018	Based on one-year old purchase price
1. Price paid by Mahi Pono in 2018:	\$5.4 million per the purchase and sales agreement with Mahi Pono Holdings as reported by Maui Time, \$5,442,333.48 per EIS.
2. Assuming that Mahi Pono did its due diligence and \$5.4 million was a fair price for the system last year, has the value increased or decreased since the time of purchase?	<p>Due to the reduction in agriculture, there has been reduced use of the aqueduct system over the last three years, and thus a reduction in EMI staff (as confirmed by Kamole Treatment Plant staff). It is likely that changes in delivery system use combined with less maintenance of ditches and the watershed would have a negative impact on the overall condition of the system.</p> <p>Central WUPD, Page 104: Public concerns were voiced over the EMI system falling into disrepair, inefficiencies due to unlined storage reservoirs and system losses. In the East Maui Streams Contested Case, system losses were assessed to about 22 percent. As sugarcane cultivation is transitioned to other uses, EMI continues to maintain the system and keeping the main ditches functional even with reduced volume flow. CWRM in its June 2018 decision encourages HC&S to seek to make its storage and delivery of water to its fields more efficient to increase the productive yield of the irrigation water from East Maui.</p>

True Value of the EMI System

Current condition of the EMI System:	
<p>1. Comprehensive information from EMI/Mahi Pono about the condition of the delivery system would be extremely useful to the community, not just for the purposes of determining market value, but for assessing overall impacts on the ecosystem, health, safety, and traditional and customary practices.</p> <p>The BWS TIG requested a copy of a safety analysis conducted by Oceanit a few years ago from EMI that might have provided valuable information about the state of the system, as well as recommended improvements. EMI/A&B declined to provide a copy of the report.</p>	<p>Based on the draft EIS, it is unclear what the current condition of the EMI system is. One statement indicates that there WILL be maintenance but does not clarify what the current maintenance is.</p> <p>Page 3-15, Draft EIS: “ongoing maintenance and operation of the EMI Aqueduct System is expected to take place under all alternatives, to the extent operations and maintenance of the system is financially feasible.”</p> <p>Page 802, DEIS: “The development and improvement of</p>

<p>BWS TIG requested a tour; which has not been scheduled by EMI yet.</p>	<p>the EMI Aqueduct System over time has cost nearly \$5,000,000, compared to its modern assessment of nearly \$200,000,000 to create a comparable system."</p>
<p>2. Community Members provided feedback about the condition of the EMI Delivery System and the impacts on safety at focus groups convened for the Draft EIS.</p> <p>Page 4-121, DEIS: <i>Mr. Hau states that the EMI Aqueduct System requires mapping that shows the 388 intakes, ditches, dams, pipes, and flumes. Each diversion should be located and identified accurately with GPS coordinates. Elevations should also be recorded. The amount of water moving through the system should be measured at specific locations within the EMI Aqueduct System as well.</i></p>	<p>Page 4-135,DEIS: <i>As landowners and farmers downstream of the EMI Aqueduct System, two major concerns emerged among participants. First, many reported that the EMI Aqueduct System is not maintained in a manner that was safe for people in the area and located downstream. Focus group participants said that portions of the ditch area are so overgrown with vegetation that people visiting the area are injured if they stumble upon or fall into ditches and flumes that are not readily visible. Two bridges on State land often flood in this wet season, and people cannot drive to their residences until the water level subsides. It was felt that the bridges are unsafe because of a lack of maintenance.</i></p> <p><i>Also, people who visit popular areas in the vicinity of the State Forest Reserve, such as Twin Falls (which is partially within License Area; the upper falls are within the License Area but, the area that is frequently visited is outside the License Area), and area trails, noted that these areas are subject to overgrown landscaping and flash flood conditions. Participants noted that neither EMI nor the State has participated in maintenance of the EMI Aqueduct System and trails in this area, even though this area attracts residents and visitors alike.</i></p>

Operating Costs

Breakdown of Operations Per EMI/A&B:	Page 4-150, Draft EIS:
1. Personnel	EMI is expected to employ a staff of 17 people with a payroll of \$0.8 million. Total direct and indirect jobs is 24, with an associated payroll of \$1.1 million.
2. Operations	EMI's operating cost under the Proposed Action would be \$0.068 per kgal, which is higher than the current MDWS payment to EMI of \$0.06 per kgal. <i>(Includes personnel above and annual maintenance)</i> the 2030 water service fee rate is estimated to be \$0.10, which has been calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, EMI would receive an estimated \$268,000 in 2030 from the MDWS
3. Taxes	GET revenue would be estimated at \$37,000 while payroll tax would be \$45,400 per year
4. Payments to DHHL and OHA	\$169,300 would be disbursed to OHA and \$254,000 would be set aside for the DHHL
5. State Leases	Based on appraisal.
6. Total operations	Page 2-1, DEIS: Total operational costs for labor, fringe benefits, materials, professional services, taxes, maintenance, anticipated rental payments to the State for the Water Lease, and other expenses are projected to be approximately \$2.5 million per year (Munekiyo, 2019).

Opportunities for Direct Cost Savings Through Improved Maintenance

Engineering study of the EMI system that assesses the cost-benefit of mitigating 20% losses is needed.	What are the funding options available for environmental assessments?
1. Given the amount of water that is lost through leakages on a regular basis, what would the savings be of proper repair and maintenance to the owner of the system, and would that savings offset any of the R&M costs?	Ko'olau WUDP, Page 121: "...water losses due to leaks, seepage, evaporation and other inefficiencies in the treatment, conveyance, distribution and storage of water range widely depending on storage and source transmission system age, length, type and many other factors...To account for water losses and determine source needs for Upcountry, water produced, rather than water billed is used as basis to determine source needs. For the Upcountry system, water losses average 20%. " USGS Civil Engineer/Hydrologist Matt Rosner is willing to come to Maui to measure stream flow and ditch flow at the 27 contested stream areas
2. What would the estimated increased availability of water to Upcountry residents be as a result of proper repair and maintenance?	
3. What would the impact be on overall East Maui stream restoration if less water needed to be diverted to supply Upcountry Maui?	

Opportunities for Indirect Cost Savings through Mitigating Health and Safety Risks

Health and Safety Considerations and Concerns, including Climate Crisis Impacts	In addition to direct costs, the County should look at other considerations that affect the well-being of Maui residents.
<p>1. What are the safety concerns that would affect the community at large if the system is not properly maintained, regardless of ownership?</p>	<p>Page 3-14, DEIS: <i>Impact to historic properties. Components of the aqueduct system that deteriorate and begin to fail, such as broken ditch walls or collapsed tunnels, have the potential to alter natural drainage patterns and increase erosion in downstream areas that are outside of established stream channels. These areas have the potential to contain surface and subsurface historic properties that could be affected by flooding and erosion. (Mason Architects, 2019).</i></p>
<p>2. What are the health and social effects on East Maui residents, including community impacts for intergenerational farmers returning to the valleys that have been without water for over a hundred years, if EMI Delivery system is not maintained optimally?</p>	<p>This would require a thorough study of the impacts of access to water on farmers and communities from a socio-economic perspective, looking at potential impacts of returns to East Maui.</p>
<p>3. How does maintenance of the EMI Delivery System impact Climate Crisis safety concerns with regard to flooding? <i>(Steps to be taken regarding climate crisis mitigation over the next thirty years were not in the DEIS although climate change is mentioned as a factor.)</i> Page 802, DEIS: The development and improvement of the EMI Aqueduct System over time has cost nearly \$5,000,000, compared to its modern assessment of nearly \$200,000,000 to create a comparable system. <i>Long term improvements will be a fraction of the replacement cost of less than \$200 million (as estimated by the DEIS)</i></p>	<p>Page 4-72, DEIS: <i>Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. With several streams being within East Maui, greater, episodic rainfall could increase stream flows and possible exceed the capacity of the EMI Aqueduct System as discussed in Section 4.3.1. The Modified Lease Area alternative could present risks to public safety if unfettered public access within the License Area meant more people could be put at risk due to stream flooding.</i></p>

Opportunities to Support Economic Development As Defined by the Community

The EMI Delivery System and Economic Development	The County should look at how public ownership would further support value-aligned economic options as defined by East Maui residents.
<p>1. An analysis of the economic and social value of a well-maintained aqueduct system that supports local farming regardless of state laws governing stream flow standards would allow the County, if it were the owner, to support multiple stakeholder needs from a variety of perspectives.</p>	<p>Summary, Page 58, DEIS: <i>At full development, East Maui farms would produce about 1.0 million pounds per year of taro and about 400,000 pounds per year of other crops, resulting in \$2.9 million in direct and indirect sales per year. Farms would support a total of 21 direct and indirect jobs.. (Munekiyo, 2019).</i></p>
<p>The impact of eliminating water loss on streams and waterfalls could be looked at from the visitor industry perspective.</p>	<p>What would loss of waterfalls impact be on tourism dollars?</p>

Economic and Other Benefits of Accountability Regarding Streams Flows

<p>Although a number of legal decisions have supported the return of water to streams, there is a lack of funding for monitoring and enforcement</p>	<p>Public ownership of the water delivery system would provide transparency, accountability, and multiple remedy options to the public if laws are not followed.</p>
<p>1. As noted above, maintaining water in the streams has an impact on the watershed. There is also local and global environmental, community, tourism, energy, food security, and cultural value to being able to ensure that streams are being restored as ordered by the State.</p>	<p>The Code (HRS § 171C-3) defines “instream use” as: beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:</p> <ol style="list-style-type: none"> 1. Maintenance of fish and wildlife habitats; 2. Outdoor recreational activities; 3. Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation; 4. Aesthetic values such as waterfalls and scenic waterways; 5. Navigation; 6. Instream hydropower generation; 7. Maintenance of water quality; 8. The conveyance of irrigation and domestic water supplies to downstream points of diversion; and, 9. The protection of traditional and customary Hawaiian rights.
<p>2. If the water delivery system were publicly owned, there are more avenues already in place for pursuing robust and authentic engagement with East Maui families regarding care of diversion paths, including a community-based system of repair and maintenance (kuleana) which supports ongoing communication and relationship building.</p>	<p>Koʻolau WUDP, Page 15: There are 36 streams in the Koolau ASEA, that are classified as perennial. Of these streams, 31 are considered continuous and 5 are considered intermittent. The CWRM database indicates that there are 323 declared stream diversions in the Koʻolau ASEA and 11 gauges, of which, only three are “active.” Most of these diversions belong to the East Maui Irrigation Company (EMI).</p>
<p>3. Because EMI/Mahi Pono is requesting a 30-year lease, there will be no opportunities for the community to demand accountability until 2050, long after intense effects of climate change have impacted Maui.</p>	<p>Page 4-121, DEIS: In addition, Mr. Hau relayed via email that he recommends a five-year lease with constant updates due to the fact that the project description lacks information on the amount of water flowing through the EMI Aqueduct System and the actual amount of water collected at each diversion and/or ditch without the factor of climate change accounted for.</p>

Community Security Benefits

<p>In addition to weighing the cost/benefits of owning the EMI Aqueduct System in the context of providing domestic water to Maui residents, the County needs to consider the long-term benefits of having control over its water supply over the next 30 years.</p>	<p>How does control of the delivery system combined with the fact that water is a public trust support proactive access to water and system improvements?</p>
<p>If the County of Maui owns the EMI Delivery system, given that Act 126 specifically allows for the continued diversion of water to serve Upcountry Maui, it seems very likely that the County would be in a strong position to receive a long-term lease from DLNR. Having its own long-term lease would release the County from dependence on a private company for the health of the community.</p>	<p>Issuance of a long-term lease of State land from the Board of Land and Natural Resources pursuant to Hawai'i Revised Statutes (HRS) Section 171-58(c) would provide the "right, privilege, and authority to enter and go upon" state-owned license areas "for the purpose of developing, diverting, transporting, and using government-owned waters" including the right to go upon those State lands to maintain and repair existing access roads and trails used in connection with the privately owned water aqueduct system.</p>
<p>According to Director Jeff Pearson at the September 19, 2019 Meeting of the Board of Water Supply, the County of Maui would not be able to apply for a revocable permit or lease unless it owned the "diversion." As the owner of the EMI delivery system, the County would be able to apply for a lease.</p>	<p>Director Pearson made this statement in response to a recommendation by Senator Kai Kahele that Maui County apply for an RP immediately. Per Senator Kahele, the county is a domestic water provider, its rights are constitutionally protected. If they have an RP or a long term lease, no matter who runs the transmission system, they can always get water for Kamole. See attached Appendix #3</p>
<p>Having ownership of the system and its own Lease, the County of Maui would be able to ensure the public safety and support public access to the area as needed.</p>	<p>Page iii, DEIS: The Water Lease will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow continued operation of the EMI Aqueduct System.</p> <p>Beyond access to domestic water, there are also health and safety issues related to Climate Change for Upcountry Maui. Page 473, DEIS: Changes in precipitation may affect Upcountry Maui's ecosystems and communities include flooding, erosion, drought, and fire.</p>
<p>Because the County is a public entity, ownership of the delivery system combined with a long-term lease would provide access to public funding for maintenance of the system and restoration of wetlands that a private owner can't access.</p>	<p>A current example is the Department of Agriculture which is providing \$4.5 million in help restore stream access. The DoA cannot use the funds on private lands, such as EMI/Mahi Pono lands. Similarly, USDA and other funding that could be used to repair the EMI delivery system, could only be accessed if the system were owned by a public entity.</p>
<p>Public ownership of the delivery system – particularly if combined with lands owned by the County of Maui – would allow for more comprehensive systems oriented solutions to water needs by combining renewable energy, bio-fuel, farming plans that are tailored to</p>	<p>Water and farming plans that integrate analysis of use of curtailed wind energy for water pumping in agriculture and municipal systems can reduce agricultural water needs, lower energy costs for pumping water upcountry, and potentially increase stream flows. (Examples: A</p>

<p>community needs, and efficient water systems.</p>	<p>Systems Approach for Investigating Water, Energy, and Food Scenarios in East-Central Maui³³)</p>
<p>Public ownership would also allow for mechanisms that require a Water Management Plan, modeled on the Water Use and Development Plan, but with teeth.</p>	<p>Page 4-145, DEIS: <i>Interviewees stressed that Mahi Pono should implement a Water Management Plan. The Plan should outline improvements to the EMI Aqueduct System, including brush fire prevention and relate water needs to specific crops.</i></p>
<p>Public control over water delivery systems and watershed areas would support proactive and integrated efforts to ensure an affordable and predictable supply of water.</p>	<p>Board of Water Supply, City and County of Honolulu, 2016 Master Plan, 6.2 Sustain³⁴ The BWS manages thousands of acres of watershed area on O’ahu to protect and preserve 212 separate potable water sources, the combination of 194 individual groundwater wells, 13 active potable water tunnels, and 5 shafts. The BWS’s proactive efforts to manage and protect the watersheds include limiting access and development, combatting invasive animals and plants, promoting healthy forests, and encouraging customer water conservation to reduce the amount of water withdrawn from the environment. These BWS efforts are discussed in more detail in Section 4, Water Supply Sustainability.</p>
<p>Public or quasi-public ownership of the water delivery system would enable the public to ensure that workers are paid a living wage.</p>	<p>Public employees would have to belong to the union.</p>
<p>Public ownership of the EMI water delivery system would provide an opportunity to move towards reparations for the Native Hawaiian families who have not had access to their streams for over 100 years. Unlike local government, which exists to meet the needs of its citizens, a private entity – particularly one that is funded by an institutional investor with obligations to pension fund beneficiaries – will never be able to put environmental and cultural ahead of maximizing revenues.</p>	<p>Per the WUDP: Historically, great efforts were made to allocate water for all needs on Maui. Today, native Hawaiians are challenged with the negative consequences of resource "ownership," with "owners" sometimes lacking sensitivity or requirements to share with others. Perhaps past strategies of sharing distribution and timing of water flows can be adopted in order for all water users to be supplied with this important resource. Consortiums of water partners have been discussed as options to ownership and management of the East Maui Irrigation water system.³⁵</p>
<p>As noted at the beginning of this document, the impetus for forming the Temporary Investigative Group grew out of the fact that Mahi Pono has not been responsive to the Community, nor has the company responded to requests by the Board of Water Supply for engagement.</p> <p>According to Water Department Director Jeff Pearson, he has continually encouraged Mahi Pono representatives to respond to the Water Board.</p> <p>Even though Director Pearson and the Maui County Administration have lobbied the State Legislature and will</p>	<p>Page 4-141 of the DEIS:</p> <p><i>It is recommended that interest groups, or stakeholder groups, are clearly defined so that there is recognition of who will be affected by the proposed Water Lease. Groups should include geographic communities, environmental, agriculture and business interests, and public agencies. Each group would be encouraged to reach consensus on their own needs, concerns, opportunities and possible solutions.</i></p> <p><i>It is recommended that interest groups are equitably</i></p>

³³<http://ulupono.com/media/W1siZiIsIjIwMTQvMTFvMTgvMjNmMjhhfjNDJfOTQxX0FfU3IzdGVtc19BcHByb2FjaF9mb3JfSW52ZXN0aWdhZGluZ19XYXRlci5wZGYiXV0/A%20Systems%20Approach%20for%20Investigating%20Water.pdf?sha=eea0a5f3>

³⁴ <https://boardofwatersupply.com/bws/media/files/water-master-plan-final-2016-10.pdf>

³⁵ Ko’olau WUDP, Page 39

<p>be lobbying the Department of Land and Natural Resources to support EMI/Mahi Pono application for a long-term lease, Mahi Pono has not been compelled to meet with the only volunteer board that advises the Mayor and County Council on matters related to water.</p>	<p><i>represented in a “Core Working Group” that would serve as a forum for exchanging ideas and collaborative efforts, as well as provide feedback and suggestions to Mahi Pono. Each member of the Core Working Group would be expected to reach out to their own networks to extend the discussion beyond the Core Working Group. While there would likely be strong differences in perspectives and opinions, the Core Working Group would need to find ways to establish core principles, common ground and manageable solutions.</i></p> <p><i>The fundamental value that will help bring people to the same table is trust. The Proposed Action has elicited skepticism and distrust over many decades, and these feelings prevent willingness for participating in mediation and collaboration. While developing trust among the various groups will be challenging, the first step is transparency. Being open about intent, plans, and activities can begin to establish credibility and open the door to dialogue.</i></p>
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Risks of leaving access to the public trust in private hands

<p>The County also needs to consider the risks of an outside privately-owned entity that has an obligation for a 10% annual rate of return controlling Maui’s future water supplies.</p>	<p>Any considerations that do not improve the corporation’s bottom line are not likely to be considered unless the corporation were to become a Sustainable Business Corporation under Hawaii State Law or make other commitments in writing.</p>
<p>Lack of water for upcountry if EMI/Mahi Pono don’t get long-term leases.</p>	<p>Page xiii, DEIS: Without the Water Lease, even if EMI could find it economically feasible to continue maintaining the EMI Aqueduct System to divert non-governmental water for diversified agriculture in Central Maui, there may not be enough water to allocate much or any to the MDWS. This lack of water would exacerbate the effects of drought when other surface water sources are unreliable for the KAP and the Nahiku, this could eliminate their primary source of water. Insufficient water delivered to the County through the EMI Aqueduct System could have significant effects on health and safety of those who currently rely on that water delivery.</p>
<p>As climate change creates more uncertainty and extreme impacts on residents, it is dangerous to assume a private company will take responsibility for potential losses (PG&E, bankrupt...)</p>	<p>Page 3-11, DEIS: Climate change may cause a decline in rainfall in Upcountry Maui. Any alternative that may result in less water being delivered through the EMI Aqueduct System to the MDWS for use in the Upcountry Maui Water System could increase periods of intense water shortages in Upcountry Maui.</p>
<p>As noted previously, Mahi Pono and its investor, PSP are required to earn a 10% annual return on their investment. It is not wise to assume that they will put the health and</p>	<p>Associated Press, 2015: “As California enters its fourth year of drought and imposes the first mandatory statewide water cutbacks on cities and towns, the \$6.5</p>

safety of Maui residents before their own profits when they've invested \$260 million. Furthermore, as an entity from out of state with no local ties, there is no social reason for accountability.	billion almond crop is helping drive a sharp debate about water use, agricultural interests and how both affect the state's giant economy." ³⁶
In terms of supporting agriculture, it is important to differentiate between export and food security corps; how specific agricultural practices impact the climate crisis; whether the specific economic activity results in good jobs for Maui residents; and or whether it will exacerbate the housing crisis by importing workers.	Because EMI System is currently owned by a company that is required to provide retirement benefits to pension fund beneficiaries, the company cannot consider Maui County food security ahead of export profits, nor can they consider native Hawaiian subsistence farming ahead of domestic or export profits.

In Summary: Determining Costs and Benefits of Purchasing EMI System

- 1) A thorough engineering and cost analysis of the current EMI Delivery system is needed to determine the EMI System's true value as a stand-alone or partial system (and the various permutations thereof), in conjunction with improvements. This analysis needs to provide reliable information about:
 - What parts of the system are usable and what is the cost and value of repair, particularly in light of the "natural downsizing" currently taking place;
 - Based on the domestic water use needs in Upcountry Maui and the condition of various aspects of the EMI system, what would be the most cost-effective strategy for partial purchase and use of the EMI system?
 - What are the options for condemning parts of the system and/or small tracts of land?
 - What are the benefits, if any, of purchasing specific ditch systems, such as only the Wailua Ditch System?
- 2) Estimates of socio-economic benefits of increased farming in East Maui;
- 3) Estimate of potential cost savings from reduced reliance on Wailoa Ditch if the County had increased access to other diversions on the EMI system;
- 4) Estimate of potential cost savings from improved health, safety, and other socio-economic indicators for East Maui residents who rely on the streams for farming and other cultural and recreational practices.
- 5) Annual costs of maintaining the EMI System.
- 6) Potential revenues based on domestic water and agricultural water sales.

³⁶ <https://www.businessinsider.com/the-65-billion-almond-crop-is-driving-the-sharp-debate-about-california-water-use-2015-4>

V. Alternative Water Sources

Overview of Water Source Planning:

Excerpted from the Maui Island Water Use And Development Plan Draft, Part Iii Regional Plans, Ko`olau Aquifer Sector Area (ASEA)³⁷:

Conventional water sources include groundwater (wells and tunnels) and surface water (stream diversions). Region specific planning objectives related to ground and surface water use and development identified and confirmed in the WUDP update public process include:

- Improving the understanding of the concepts of "precautionary planning" to reduce and adapt to the effects of drought and climate change upon water resource availability and quality
- Adapting future populations to local water resource conditions, integrating conservation and the use of alternative resources
- Water needs of DHHL in the Ko`olau should be considered in general and in accordance with the 2017 State Water Projects Plan

Planning objectives related to groundwater and surface water source use and development identified to apply island wide include:

- Manage water equitably
- Provide for Department of Hawaiian Homelands needs
- Provide for agricultural needs
- Protect cultural resources
- Provide adequate volume of water supply
- Maximize reliability of water service
- Minimize cost of water supply
- Increase water storage capacity with a reserve for drought periods.
- Ensure that adequate water capacity is available for domestic needs of the region.
- Ensure that the development of new water sources does not adversely affect in-stream flows.
- Improve the existing potable water distribution system and develop new potable water sources prior to further expansion of the State Urban District boundary or major subdivision of land in the State Agricultural or Rural Districts.
- Ensure adequate supply of groundwater to residents of the region before water is transported to other regions of the island.

³⁷ Ko`olau WUPD, Page 103

Potable Groundwater Development:

From Ko`olau WUDP:

The amount of groundwater that can be developed is limited by the amount of natural recharge and aquifer outflow that contribute to streamflow and to prevent seawater intrusion, established as sustainable yield. Because delineation of aquifer sectors and systems in some cases are based on limited hydrologic information, areas for potential groundwater development must be assessed on its own merits to determine any additional needs for hydrologic studies and interaction with surface water and other sources.

Understanding potential impact of climate change adds to uncertainty in long-term groundwater availability. The primary responsibility to determine potential impacts on water resource availability lies with the State CWRM who in turn relies on studies and predictions by the scientific community and other agencies. Water purveyors need guidance how to mitigate and adjust to potential changes in groundwater availability.

Other constraints on groundwater availability include access and cost. Conveyance from high yield aquifers in remotely located watersheds to growth areas can be difficult and expensive due to topography and distance. Basal well development at high elevations, such as Makawao aquifer above 1200 feet would result in high pumping costs, just in terms of pumping water from the water table to ground elevation.

Potential effects of groundwater development on streamflow and on the quality of water pumped from existing wells in a region can be evaluated by robust hydrologic studies and models. Joint funding and collaboration between the municipal and private purveyors, CWRM and the U.S. Geological Survey would focus studies to maximize benefits and prevent conflicts in water development and designation. Aquifer systems in Ko`olau are not extensively studied, as indicated by CWRM's confidence rating in establishing sustainable yield. Haiku aquifer has sufficient yield to serve regional demand and support development of planned growth areas outside Ko`olau. It is recommended that CWRM prioritize hydrological studies and groundwater modeling in Haiku and Honopou regions to guide private and public well development and ensure potential impacts on surface water is addressed first.³⁸

Additional points from Central WUDP:

Other constraints on groundwater availability include access and cost. Conveyance from high yield aquifers in remotely located watersheds to growth areas can be difficult and expensive due to topography and distance. The Central ASEA consist of the driest regions on Maui, with annual rainfall generally less than 50 inches. Population centers and growth rely on groundwater

³⁸ Ko`olau WUDP, Page 104

imports from the Wailuku ASEA and the Ko`olau ASEA where rainfall and groundwater recharge are substantially higher.³⁹

<p>In order to determine whether development of wells in East Maui should be considered as an alternative to surface water, yield, aquifer capacity, and energy cost need to be studied.</p>	<p>Central WUDP, Page 112: Strategy #4 Explore East Maui well development in combination with Makawao aquifer basal groundwater to meet projected demand on the MDWS Upcountry System. Initiate a hydrologic study to determine any negative impact on existing ground and surface water sources, stream flow and influences from dikes. Potential yield is more than the needed 6.3 mgd (potentially in addition to development for the MDWS Central System). Lead agencies would be CWRM and MDWS and hydrologic study to be completed by USGS.</p>
<p>Current inventory of wells in East Maui: The Ko`olau ASEA includes 149 wells, of which 131 are considered "production" wells, the remainder (18) are classified as "unused" (9), observation (2), and seven classified as "other" that do not produce water. The 131 production wells include County municipal (4), private public municipal (3), domestic (59), agricultural (crop use[39]), agricultural (1), agricultural (aquatic plants & animals use [1]), one agricultural (livestock and pasture use), three agricultural (ornamental & nursery plants use), 15 irrigation, and seven irrigation (landscape/water features use).</p> <p>CWRM pumpage reports for 2014 show that pumpage for the Ko`olau ASEA was approximately 0.92 MGD with County Municipal wells accounting for 0.878 MDG (95.81 percent of total sector pumpage), Municipal Private Public wells accounting for 0.015 MDG (1.63 percent of total sector pumpage), Agriculture wells accounting for 0.014 MGD (1.53 percent of total sector pumpage), Domestic wells accounting for 0.008 MGD (0.86 percent of total sector pumpage), and irrigation wells accounting for 0.0017 MGD (0.19 percent of total sector pumpage). However, it is likely that domestic use is underreported.</p>	<p>Page 4-59, DEIS: <i>While no groundwater is transferred from the Ko`olau Aquifer Sector, surface water is conveyed from the sector to the Central Aquifer Sector via the EMI Aqueduct System. Since surface and groundwater interchange depends on the underlying geology, the increase in surface flow since the cessation of sugar cultivation in 2016 also contributes to an increase in groundwater in East Maui.</i></p> <p>Page 3-9, DEIS: <i>There may be a connection between decreased stream diversions and increased groundwater. However, the current pumpage of wells in the four aquifers in East Maui (Ha`iku, Honopou, Waikamoi, and Ke`anae of the Ko`olau Aquifer Sector) is well below the SY (Sustainable Yield.)</i></p> <p>Page viii DEIS: naturally running low during seasonally dry weather conditions. Hence, the amount of water that can be diverted during dry weather conditions would be substantially less than when sugar was being cultivated. As a result, dependence on groundwater resources during such conditions may increase and/or water conservation measures may be required. Future climate change could also exacerbate the frequency and length of periods of low rainfall.</p>

³⁹ Central WUPD, Page 105

<p>Cost of well development and operation: Wells are more expensive than surface water due to energy costs for development and pumping, but costs can be mitigated with solar, wind, hydro-pumped storage, particularly if the Department has access to land.</p> <p>In order to comprehensively compare costs, all factors described previously in this report related to repair and maintenance of the EMI Aqueduct System, combined with the environmental, safety and cultural benefits of EMI ownership would need to be compared to well development costs.</p> <p>Any well development plan should include scenarios that utilize renewable energy, the costs of the development of which would also need to be calculated. However, agreements with MECO and the benefits of bringing the State to its goal of 100% renewable energy by 2045 would also need to be factored in.</p> <p>Page 110 WUDP: Explore new basal well development in the Makawao aquifer to accommodate growth Upcountry and add reliable new source. Potential yield is up to 3 mgd. Lead agency is MDWS, DLNR and/or public/private partnerships.</p>	<p>Page 3-2 to 3-3, DEIS: “a single well is normally allowed to pump about 1 mgd within its area”</p> <p>Given current figures regarding Kamole Treatment Plant needs, 3 to 7 wells would need to be developed. Each well site would have an estimated development cost of \$6 million. (Akinaka, 2019).</p> <p>The cost of planning, obtaining permits for, and constructing 7 wells would be approximately \$13 million. Added to this cost would be transmission pipes, additional pumping and related energy consumption to reach higher elevations, and reservoirs.</p> <p>Page 110, WUDP: The 2013 MDWS study estimated well development at 2,050 foot elevation and related booster pump and transmission line to about \$8.4M and a 20-year cost of \$2.90 per 1,000 gallons for development of 1.2 mgd pump capacity, normally run at 0.8 mgd source capacity. The study only evaluated a scenario with one well in Makawao aquifer and in combination with well development outside Makawao aquifer.</p>
<p>Central WUDP, Page 109: Adding 20% to projected 2035 demand of 8.53 mgd for Upcountry is 10.23 mgd. With the addition of the Priority List demand of 7.3 mgd, total demand is 17.54 mgd. Available source capacity is 11.2 mgd, which would require the balance 6.34 mgd to be developed. (includes 7.0 Surface Water)</p> <p>8.53 mgd 2035 Municipal Demand + Peak Factor 20% = 10.23 mgd + Upcountry Meter Priority List 7.3 mgd = 17.54 mgd</p> <p>- 11.2 mgd Available Source Capacity = 6.34 mgd Source Needed</p>	<p>Page 3-17: DEIS:</p> <p>If the MDWS has to replace the 7.1 mgd supplied by the EMI Aqueduct System, and in addition develop to the 7.95 mgd projected to be needed to meet future water demands, the MDWS would need to develop 15.05 mgd of new water source. It is estimated that the life- cycle unit cost to develop those necessary wells and reservoirs for Upcountry Maui is \$38 per kgal. This would translate to \$2.6 billion, compared to \$1.2 billion under the Proposed Action.</p>

Other Sources of Potable and Non-Potable Water

Other Water consumption varies seasonally, with the low demand months generally reflecting lower outdoor irrigation demands. For MDWS systems, the seasonal fluctuations indicate the potential for outdoor water conservation as well as ways to offset use of potable water for non-potable needs. These conditions are likely to also apply to all public water systems that serve community needs.

Reservoirs: Are there studies showing current reservoir capacity and optimum inventory for an efficiently integrated storage system?	What is a private owner’s obligation to the public with regard to maintaining storage for health and safety reasons?
<p>Central WUDP, Page 123: In summary, reservoir and treatment plant expansion would have multiple benefits:</p> <ol style="list-style-type: none"> 1. Improve reliable capacity 2. Economical water supply that minimized expensive groundwater pumping costs 3. Defer source development in Haiku aquifer in light of uncertainties related to the East Maui Consent Decree 4. Recharge regional groundwater in wet season when maximizing use of stormflow from rainfall <p>If financing can be secured, raw water storage construction presents an economic strategy compared to basal well development. If a string of basal wells and extensive transmission would be added to the MDWS Upcountry System during the same time frame as a reservoir, the economic benefit would be significantly diminished. Both resource strategies have long implementation time frames and can be adjusted over time. Should development of basal source in the Makawao aquifer produce adequate yield and quality, additional wells in Haiku aquifer OR expanded surface water storage and treatment will meet projected demand. Uncertainties in future stream flow must be weighed against increased reliability and cost of basal well development. Maximizing affordable surface water use in wet season must be weighed against “over building” expensive wells and infrastructure that is not used to capacity.</p> <p>On Oahu, the BWS also operates brackish and recycled water nonpotable water systems for irrigation and industrial use in ‘Ewa, Mākaha, and Hālawa Airport. The BWS owns and maintains five dams or open reservoirs. Four reservoirs in Nu‘uanu are now used solely for flood control, and the fifth, Mauna ‘Olu reservoir, stores nonpotable water used for irrigation. The four Nu‘uanu reservoirs may be used for stormwater capture, infiltration, or hydropower in the future.⁴⁰</p>	<p><i>Central WUDP, Page 124: Strategy #8:</i> Pursue hydrologic studies needed to explore the Haiku aquifer and an updated ditch flow analysis to optimize raw water storage and treatment plant capacity at Kamole Weir in order to expedite the most feasible new source. Raw water storage and Kamole Water Treatment Facility expansion are contingent on a long term agreement with A&B Properties allocating adequate surface water for the MDWS Upcountry System. Lead agency is MDWS.</p> <p>This strategy supports multiple planning objectives, including to seek expanded municipal withdrawal from the lowest cost source to serve the Upcountry region and to increase water storage capacity with a reserve for drought periods.</p> <p><i>Central WUDP, Page 104, Water Loss Mitigation:</i> Explore funding and conduct a cost benefit analysis of improvements to the EMI non potable conveyance system to mitigate losses and preserve existing reservoirs at risk of decommissioning. County of Maui and A&B Properties/EMI Company in partnership would lead initiatives. Priority components and associated costs TBD.</p> <p><i>Page 3-4, DEIS:</i> EMI Aqueduct System has eight reservoirs, mostly along the lower ditch systems, and the Central Maui field irrigation system has 48 major reservoirs. The combined storage capacity of these existing reservoirs is approximately 1,344 mg (Akinaka, 2019). Most of these reservoirs, however, have not been used since the closure of sugar in 2016 and others have not been used because they do not meet dam safety requirements. As a result, many will require extensive upgrades to put them back into service. These upgrades could cost between \$50 – 100 million (Akinaka, 2019). Obtaining permits to upgrade and repair these reservoirs will also be challenging due to current dam safety requirements. Assuming that the existing reservoirs can be restored to their full capacity of 1,344 mg, and the amount of flow available for irrigation under the Proposed Action is approximately 92.32 mgd, then the existing reservoirs could provide about 16 days of storage</p>

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<p>Recycled Water</p> <p>The State of Hawai'i defines R-1 water as the highest-quality recycled water; it has undergone filtration and disinfection to make it safe for use on lawns, golf courses, parks, and other areas used by people. R-2 recycled water can only be used under restricted circumstances where human contact is minimized.</p>	<p>Central WUDP, Page 57: Wastewater generated within the Central ASEA is treated at the Kahului Wastewater Reclamation Facility (WWRF), east of Kahului Harbor, and the Kihei WWRF. No wastewater serves East Maui or Upcountry?</p>
<p>Rainwater Catchment:</p> <p>WUDP: Rainwater catchment is the collection of rainwater from a roof or other surface before it reaches the ground.</p> <p>Rainwater catchment systems are not regulated by the Department of Health, making estimates of their use difficult. No inventory of installed catchment systems throughout the island is available.</p> <p>Central WUDP, Page 129: Rain barrel incentive programs are included in recommended demand side conservation strategies and the MDWS conservation program.</p> <p>Catchment systems for agricultural uses have historically played an important role Upcountry. Support for increased adaptation to natural ambient rainfall and climate adapted crops is consistent with the objective to use appropriate water quality for appropriate uses.</p>	<p>Koolau WUDP, East Maui: On average, USGS data indicates rainfall ranges from 101-454 inches per year, making the Ko'olau ASEA Maui Island's rainiest ASEAs and one of the wettest places in Hawai'i. The heaviest rainfall is in the Ke'anae ASYA, where it rains as much as 454 inches per year. The cooler, dryer upper elevations may have as little as 101 inches of rain per year. Rainwater catchment is not as reliable a conventional water resource because it is extremely sensitive to the climate; however, rainwater catchment is a viable option in this region.</p> <p>Central WUPD, Upcountry and Central, Page 56: Rainfall averages 15 inches along the southern coastline on Haleakala, and it increases to 70 inches as one moves eastward and into higher elevations. Rainfall catchment systems occur in the eastern part of the hydrologic unit, from Makawao and Olinda and also scattered throughout Kula. There is no official inventory of catchment systems but it is an important supplemental resource for non-potable purposes. Catchments systems using potable treatment technologies have been installed Upcountry due to water meter limitations imposed by the Upcountry Meter Priority List.</p>
<p>Stormwater reuse:</p> <p>The Fresh Water Council believes that a critical element of protecting long-term water security in the Hawaiian Islands is to aggressively increase our ability to capture rainfall and surface storm water. Our underground fresh water supply can be restored with: 1) reduced pumping from the aquifers; 2) increased rainfall; and/or, 3) increased effective recharge. ⁴¹</p> <p>Central WUPD, Page 129: Stormwater capture and use can provide multiple mitigating effects on</p>	<p>There is no reported stormwater reuse within the Ko'olau ASEA, although a limited number of development projects may have stormwater controls incorporated into project design to reduce runoff and its effects.</p> <p>Stormwater reuse at the parcel scale may also provide an opportunity to offset landscape and other irrigation demand of projects or households.</p> <p>Central WUPD: There is no reported stormwater reuse in the Central ASEA, although some</p>

⁴¹ Fresh Water Council, Page 13

<p>climate change, including off-setting potable supply for irrigation needs; recharging low level and more brackish portions of the region’s aquifers; and mitigating sediment runoff reaching the nearshore marine environment and reefs.</p> <p>Central WUDP, Page 58: Capture and reuse of stormwater runoff is an under-utilized water resource that provides an opportunity to reduce reliance on groundwater and surface water for landscape irrigation, especially when incorporated into the design of development projects in order to minimize infrastructure costs.</p>	<p>development projects may have stormwater controls incorporated into project design to reduce runoff and its effects. The <i>Hawai’i Stormwater Reclamation Appraisal Report, 2005, and Study Element 3: An Appraisal of Stormwater Reclamation and Reuse Opportunities in Hawai’i</i>, September 2008, screened and identified four projects on Maui within the final ranking, which might provide opportunities to augment agricultural irrigation water that is diverted currently from Maui streams, in addition to providing other benefits:</p>
<p>Desalination:</p> <p>Desalination of ocean or brackish water was studied as an option in the 2013 MDWS study, Maui Island Water Source Development Options for the Central MDWS system, but an assessment has not been conducted for the Ko’olau ASEA, and there are presently no desalination projects within. There are no desalination projects in the Central ASEA.</p>	<p>One major cost to operate a desalination plant is the high energy demand of the process, and the disposal of the brine liquid byproduct creates logistical and environmental challenges that also increase cost. As desalination technology advances and energy costs decrease, brackish and ocean water desalination should continue to be evaluated for their potential as effective future water supply alternatives.</p>

VI. Ensuring Access to the Public Trust:

<p>While ownership of parts or the full EMI Delivery System, as well as ownership of land parcels are obvious avenues for ensuring access to the public trust, other remedies should also be explored.</p>	<p>What are the legal actions that can be taken besides condemnation?</p>
<p>Negotiate new Domestic water use Agreements with EMI/Mahi Pono:</p> <p>As noted in the DEIS, “EMI agreements with the MDWS provide that water supplied to the MDWS is contingent upon the Water Lease being issued...Currently the MDWS is being charged 6¢ per 1,000 gallons to receive East Maui surface water for the KAP and other Upcountry Maui farm areas.”</p> <p>In the past, EMI was required to maintain the roads and trails, maintain the delivery system, and leave enough water in streams for downstream domestic</p>	<p>One key way to safeguard the public is to negotiate new agreements with EMI/Mahi Pono that:</p> <ol style="list-style-type: none"> 1) Remove contingency of access to the public trust on a private company receiving permits/leases from BLNR. 2) Require a minimum level of repair and maintenance of the Ditch System by EMI/Mahi Pono to ensure the health and safety of the community. 3) Require that EMI/Mahi Pono reduce leakages in the delivery system to optimize water use, thereby

<p>water users and Kuleana users, and they were required to post a \$100,000 performance bond.⁴²</p>	<p>increasing amount of water going to the Kamole Treatment Plant, and decrease the amount of water diverted from streams.</p> <p>4) Require a minimum investment in the care of the watershed and other environmental responsibilities, that includes partnerships with stakeholders.</p> <p>Can the county require water conservation from an environmental perspective – for example a kind of carbon tax – wasted water tax?</p>
<p>State Irrigation System</p>	<p>WUPD (Central)⁴³ A non-potable State water system exists within the Polipoli State Recreation area. The Polipoli Springs State Recreation Area water system is located in the Kahikinui Forest Reserve, overlying the Kama`ole Aquifer. The water system is owned and operated by the State of Hawai`i and managed by the DLNR-State Parks. The water system serves a park cabin and campground area. The non-potable source for the water system is an unnamed spring. The spring water flows through a 1-1/2-inch pipe to the campground area. The estimated water demand is 0.002 mgd. Information to determine the stream diversion capacity is not available and flow measurements are not recorded. System source capacity adequacy could not be determined. Future water demands for the park are unknown.</p>
<p>Ownership can take multiple forms. Parts or all of the EMI Water Delivery System:</p> <ul style="list-style-type: none"> • Can be owned and operated by the County of Maui, regulated by the PUC. • Can be owned and operated by a Maui Water Authority (A Quasi-public organization) that would protect, regulate and develop future water systems for Maui County holding to the concept that water is a public trust with Hawaiian water rights having priority over all other end users of this public commodity. The PUC would regulate the rates to charge private and commercial consumers and the County of Maui. • Can be owned by a public-private partnership, similar to above, possibly incorporated as a Public Benefit Corporation (in order to explicitly commit to serving the public good), and regulated by the PUC. • Can be owned and operated by a co-operative. 	<p>Page 4-140, DEIS: <i>Another theme, expressed primarily in the Kula / Pukalani focus group, was that water is a public trust, and should not be controlled by a single private corporation. They suggested a restructuring of public utilities to include a water utility that would be administered similar to the current electricity in the public utility structure. Further, profit made from use of this public trust should be invested in public need.</i></p>
<p>Purchase of parts or all of the EMI Water Delivery System and systems that connect to Kamole Weir</p>	
<p>Purchase of the EMI Water Delivery System and</p>	

⁴² Land Lease Bearing, General Lease #3578, 1959, Pages 3,4, 15,16

⁴³ Central, P. 49

<p>Mahi Pono Lands:</p> <p>Access to Mahi Pono land would allow the County or "Maui Water Authority" to implement a comprehensive Water Management Plan that includes care of the watersheds, comprehensive support for East Maui practices, renewable energy options, supporting proactive and integrated efforts to ensure an affordable and predictable supply of water combined with flexibility with regard to revenue generation that is not dependent on water consumers.</p>	
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10238-04
September 3, 2021

Ms. Kelly T. King
Maui County Council
200 South High Street
Wailuku, HI 96793
kelly.king@mauicounty.us

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas
RE: PAF 19-335

Dear Councilmember Kelly T. King:

Thank you for comments dated November 5, 2019 (ref. PAF 19-335) regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns, which include a collection of statements and questions that you identified as being collected during three public meetings (Maui County Council on October 18, 2019 and the Council's Environmental, Agricultural, and Cultural Preservation Committee on October 7 and 15, 2019). These comments and concerns have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of these comments has been appended to the Final EIS in Appendix N.

We note that in your comment letter you requested "a time extension to allow for additional public comment." The period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Simon Russell, East Maui resident:*

10238-04

Letter to Councilmember Kelly T. King

Page 2 of 61

September 3, 2021

Please provide verification that the current IIFS are being met by providing monthly records of stream flow for the streams contained in the IIFS requirements.

Response 1: Providing verification of compliance with the Interim Instream Flow Standards (IIFS) is outside the scope of the EIS. The IIFS required under the Commission on Water Resources Management (CWRM) Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O) is a separate process from the Water Lease process, as discussed in Section 1.3.3 of the Draft EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Please note, however, that as required by the CWRM D&O, EMI submitted a report to the CWRM one year following the date of the issuance of the D&O that outlined and discussed:

1. Modifications to diversions to meet the amended IIFS.
2. Water deliveries at Honopou Stream and Māliko Gulch, and any changes EMI ascribes to the amended IIFS.
3. Changes in stream diversions and ditch settings as Mahi Pono’s irrigation requirements increase.

In addition, the requirements of the current East Maui revocable water permits specify that quarterly reports to the BLNR are required. These reports are mandated to include a statement of compliance with the IIFS. Since the CWRM D&O was issued, EMI has been working closely with the CWRM staff on the implementation of the ordered IIFS. The IIFS are being met for all License Area streams. It is expected, and the EIS takes into account, that compliance with the IIFS requirements under the CWRM D&O will also be required under the Proposed Action.

Comment 2: *Please provide a detailed description of the governance structure, decision-making ability, and ownership of EMI, Mahi Pono, and A&B.*

Response 2: Providing a detailed description of the information you requested is outside the scope of the EIS. Please refer to Response #1 above regarding the scope of the EIS. The management and relationships among the entities you listed are beyond the scope of the EIS, as those issues are not relevant to the analysis of environmental impacts. Any entity that is awarded a Water Lease will be required to comply with the terms of the lease.

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Comment 3: *The landowner is the one who is supposed to do the EIS. In this case, the landowner is the State of Hawaii; therefore the State DLNR should be submitting the EIS.*

Response 3: As discussed in Section 1.4 of the Draft EIS, by order dated July 8, 2016 the Board of Land and Natural Resources (BLNR) directed A&B to proceed with the preparation of an EIS. Prior to that, BLNR, by order dated April 14, 2016, had directed A&B to commence the EIS process and to provide a scope of work for the preparation of an environmental review document pursuant to Chapter 343, HRS. The BLNR instructed that the scope of work should distinguish between those matters that can be undertaken prior to the CWRM decision on the petitions to amend the IIFS, and those matters that require the final CWRM IIFS decision. On June 9, 2016, A&B submitted to the BLNR a Scope of Services for the Preparation of a Chapter 343, HRS Environmental Impact Statement for the Proposed Lease for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. A copy of the BLNR order, as well as the approved scope of work, is enclosed as Attachment #1 for your reference.

Comment 4: *Provided that a for-profit, foreign-owned entity will own the EMI system, what assurance is there that the water will be adequately managed as a public trust?*

Response 4: Regardless of who owns the EMI Aqueduct System and who is awarded the subject State Water Lease, the processes governing the use of the water are subject to the Public Trust Doctrine. The Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease. As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action as shown on pages 1-25 to 1-27.

Comment 5: *What is the dollar value of 65.86 million gallons per day if sold at the County of Maui rates for:*

- *Agriculture?*
- *Drinking water?*

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Response 5: The County of Maui assesses water service fees based on 18 different use classifications (i.e., agricultural, single-family, multi-family, industrial, etc.). The average water service fee rate Countywide is cited at \$4.00 per 1,000 gallons or rather, per “kgal” as discussed in Section 4.7.3.3 of the Draft EIS. Agricultural water rates are \$1.10 per kgal for potable water and \$1.00 per kgal for non-potable water, as discussed in the report titled East Maui Water Lease: Agricultural and Related Economic Impacts, which is provided as Appendix I of the EIS. Residential and general rates for other water consumers range from \$2.05 to \$6.55 per kgal under normal conditions (when there are no water shortages). These rates are intended to cover the cost of operating and maintaining the County of Maui Department of Water Supply (MDWS) source and distribution facilities. If calculated by millions of gallons a day (mgd), the value of 65.86 mgd of water would range from \$65,860 per day at a rate of \$1.00 per kgal (non-potable agricultural water) to \$431,383 per day at a rate of \$ 6.55 per kgal (residential and other non-agricultural). However, please note that these “values” are not comparable to the potential lease rent to be charged by the State for the proposed Water Lease, as the State rent is for raw water, that is water at the source, within the East Maui watershed, not water delivered to one’s door, which is what the MDWS “values” you have requested represent. Water provided by MDWS, at MDWS rates, provides water to the place of use--one’s home, business, farm, etc. The rates to the consumer includes infrastructure operation and maintenance, existing debt service obligations, capital spending for system sustainability, etc. None of these factors are applicable to the Water Lease, which again, is water at source only.

Comment 6: *Please provide a clear chain of land title under Hawaiian Kingdom law from the Kuleana Act of 1850 to the present “ownership” of the Crown Lands claimed by the applicant.*

Response 6: Providing the land title information you requested is outside the scope of the EIS. Please refer to Response #1 above regarding the scope of the EIS. The Applicant does not claim ownership of the proposed License Area. Also note that under the 1938 Agreement between A&B / EMI (referred to as “the Company” within the 1938 Agreement) and the Territory of Hawai‘i, which has been added to the Final EIS as Appendix R, acknowledges EMI’s ownership of the EMI Aqueduct System. Pursuant to the 1938 Agreement, the Territory of Hawai‘i (now the State) granted perpetual easements to EMI for those portions of the EMI Aqueduct System located on State lands. See EIS Section 3.3, which has been updated in the Final EIS to further discuss rights the EMI Aqueduct System has to a limited amount of water collection irrespective of any Water Lease. See pages 3-24 to 3-25 of the Final EIS.

As described in Section 2.1.2 of the Draft EIS, the EMI Aqueduct System spans both State-owned and EMI-owned lands and is an integrated system. Relative to the proposed Water Lease, the Collection Area for the EMI Aqueduct System covers approximately 50,000 acres, of which

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33,000 acres are owned by the State and 17,000 acres are privately owned. See Draft EIS Figure 1-1 (EMI Aqueduct System Collection Area). The EMI Aqueduct System also collects water from purely private lands located to the west of the Collection Area, as noted in Figure 1-1. As mentioned above, under the 1938 Agreement, the State and EMI each granted to the other “perpetual” easements to those portions of the EMI Aqueduct System located on the other’s land. The duration of these “perpetual” easements was stipulated to last until the termination of the 1938 Agreement. The 1938 Agreement is still in place and valid. The State may, but is not obligated to, terminate the 1938 Agreement only if the licenses are offered at auction but EMI fails to bid. EMI may, but is not obligated to, terminate the 1938 Agreement if the State fails to offer the licenses at auction. Thus, if no license is offered at auction, the 1938 Agreement provides that EMI may still collect water derived from the EMI owned portions of the Collection Area and, utilizing the easement granted to it in the 1938 Agreement, transport it across the portions of the EMI Aqueduct System that transverse State lands.

The 1938 Agreement defines the “Territory” to include its “successors” (i.e., the State). EMI has not failed to bid at any auction of licenses, so the condition precedent for the State to have the right to terminate has not occurred. While the State has not yet offered the licenses at auction, EMI has not exercised its right to terminate and is instead a proponent of the Proposed Action which would lead to the licenses being offered at auction for the purpose of the continued integrated operation of the EMI Aqueduct System. Neither party has terminated the 1938 Agreement.

Comment 7: *Under whose authority was the land contained within the DEIS purchased, sold, or leased?*

Response 7: Your Comment #7 above is unclear as you do not specifically discuss which “land” you are referring to or explain what manner of authority you mean. The EIS discusses three overall regions as mentioned in Chapter 4 of the EIS; East Maui, Upcountry Maui, and Central Maui. That section has been slightly modified in the Final EIS, as shown on pages 4-1 to 4-2, and relevant text has also been incorporated into pages iii to iv of the Executive Summary of the EIS. Essentially, within the EIS, “East Maui” refers to the proposed License Area, the water Collection Area, and areas generally makai of the EMI Aqueduct System, including the Nāhiku community. The Upcountry Maui area referred to in the EIS is generally the area serviced by the portion of the Upcountry Maui Water System that gets water from the Kamole-Weir, Olinda, and Pi‘iholo water treatment plants (WTP). For the purposes of the EIS, the term Central Maui, for the purposes of projecting full implementation of the Proposed Action and related diversified agricultural plan, refers to the approximately 30,000 acres of agricultural land that had been cultivated with sugarcane for over a century utilizing water from the EMI Aqueduct System. Geographically, what is referred to as Central Maui encompasses approximately 36,000 acres,

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but approximately 6,000 acres is comprised of uncultivated areas, including roads, gulches, and patches of uncultivated land.

Regarding East Maui, the License Area, which encompasses approximately 33,000 acres, is owned by the State of Hawai'i as discussed in Section 1.1 of the Draft EIS. This is the area that would be subject to the Water Lease issued by the BLNR. The EMI Aqueduct System is situated on easements across the License Area as described in Response #6 above. The remaining 17,000 acres of the Collection Area is private land.

Regarding Upcountry Maui, this includes various landowners, including land owned by the County. The Kula Agricultural Park (KAP), comprised of approximately 445 acres, is owned by the County of Maui and is managed by the County's Office of Economic Development. Moreover, in 2018 the County acquired approximately 262-acres of land from A&B to be used for the expansion of the KAP. More information regarding the KAP expansion has been added to Section 2.1.3.2 of the Final EIS as shown on pages 2-20 to 2-21.

Mahi Pono acquired the Central Maui lands from A&B in December 2018 as discussed in Section 1.1 of the EIS

Comment 8: Tom Bacon, East Maui resident:

Please provide a phased plan and year-by-year timeline detailing each proposed activity by Mahi Pono and each activity's water-use needs

Response 8: The Mahi Pono farm plan is identified in the EIS as a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community. This is explained in Section 2.1.4 of the EIS as follows:

Mahi Pono's farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation. All of these things must be considered when developing an evolving and feasible diversified agricultural plan for Central Maui.

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Another factor in developing the farm plan is to be sensitive to the existing local farming community. Mahi Pono does not want to displace local farmers by planting competing crops or artificially accelerating the ramp-up of operations, both of which could have the potential to drive local farmers out of the market. Mahi Pono's goals for its diversified farm plan will be guided by its core principles of using reasonable and environmentally responsible "best management practices", planting non-GMO crops, and growing food for local consumption.

Mahi Pono's farm plan and its impacts are based on a production timeline of full operations by 2030. It is explained in Section 2.1.5 of the EIS that it will take approximately 10 years for Mahi Pono and its lessees to remove volunteer sugarcane and weeds, amend soils, install field improvements, build warehouses and other structures accessory to its agriculture use, and plant crops. The predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. At full operations, the Mahi Pono farm plan is anticipated to consist of the following as presented in Section 2.1.4 of the Draft EIS:

The Mahi Pono farm plan assumes the following:

- *The total surface water available for use after system losses (approximately 22%) is estimated to be approximately 65.88 mgd.*
- *Surface water can be supplemented by a brackish groundwater amount equal to 20 percent of surface water. Taking into account the CWRM D&O, it is estimated that there could be up to 16.47 mgd of brackish groundwater used in the Central Maui agricultural fields. (Plasch, 2019)*
- *Under the CWRM D&O, the total water available for use on the Central Maui agricultural fields after system losses is approximately 82.35 mgd*
- *That total amount of water will be delivered to approximately 30,000 acres. Of those 30,000 acres:*
 - *Approximately 15,950 acres would be used for farming, including 12,850 acres for orchard crops and 3,100 acres for other crops.*
 - *Approximately 13,800 acres would be used for pasture, of which about 4,700 acres would be irrigated.*
 - *Approximately 250 acres would be used for green energy, such as a solar farm.*

Because there is insufficient surface water to support the entire farm plan, brackish groundwater will also be used. . .

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This farm plan would consist of the following:

- *Approximately 20,650 acres of irrigated farm land, including 12,850 of orchard crops, 600 acres of tropical fruit, 1,200 acres of row and annual crops, in addition to a community garden and limited non-GMO energy crops.*
- *Approximately 13,800 acres of cattle pasture, comprised of 4,700 acres of irrigated pasture, and 9,100 acres of unirrigated pasture. This should fit the proposed model of grass-finishing on irrigated pasture. The unirrigated acreage is less than 10,000 acres, which helps ensure that that the entire area devoted to unirrigated pasture will remain productive.*

However, please note that Table 2-1 of the Draft EIS (Table 2-2 of the Final EIS) that was incorporated into Section 2.1.4 has been updated with more precise water usage numbers as shown on page 2-29 of the Final EIS. Moreover, please note that Section 2.1.4 of the Final EIS has been revised to reflect current and near-term expected water use as shown on pages 2-30 and 2-32, which details average water being diverted from East Maui streams through the EMI Aqueduct System and how that water will be used.

It important to note that as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

The EIS also acknowledges that, should the Water Lease be issued, the Department of Hawaiian Home Lands (DHHL) has rights to reserve water source for use on its homestead lands. See EIS Section 2.1.1. For the purposes of the impact assessment, the farm plan described in the EIS assumes use of all of the water that could be diverted from East Maui streams after compliance with the CWRM D&O. However, the EIS also acknowledges that the water use granted under the proposed Water Lease is subject to DHHL's reservation. In which case Mahi Pono could be obligated to reduce elements of its farm plan, and thus the availability of crops, to accommodate the DHHL's water allocation under the current IIFS. Consistent with the analysis provided in the Agricultural and Related Economic Impacts report (EIS Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture. The Reduced Water Volume alternative described in Chapter 3 of the EIS provides an assessment of the impacts of less water being made available for the farm plan in the Central Maui agricultural fields.

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Comment 9: *Provide “performance indicators” and associated benchmarks within the plan.*

Response 9: Your comment is acknowledged, however we cannot discern what you mean by "performance indicators" or "associated benchmarks." Mahi Pono's farm plan will continue to put the Central Maui agricultural lands into agricultural cultivation and the acres under cultivation have increased since the publication of the Draft EIS as noted in Section 2.1.4 of the Final EIS as shown on page 2-30. Mahi Pono expects to continue expanding cultivation in a manner that responds to the ever-changing agricultural market demands and other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community. Moreover, as mentioned in Response #8 above, that as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

Comment 10: *Chris Gaardner, East Maui resident:*

The farm plan does not adequately justify the water needs put forth in the DEIS, and the farm plan does not provide sufficient detail to adequately assess its merits

Response 10: We respectfully disagree with Comment #10. As described in Response #8 above, the Mahi Pono farm plan is expressly intended to be a flexible plan that remains fluid and therefore responsive to ever-changing conditions in order to make for a feasible farming operation. Mahi Pono's current plans for Central Maui envision cultivating a broad range of food and non-food crops for local consumption by State of Hawai'i residents and visitors. Mahi Pono's farm plan and its impacts are based on a production timeline of full operations by 2030. The calculations of future water requirements (year 2030) are presented in Table 2-2 of the Final EIS and Table 3 of Appendix I (the East Maui Water Lease: Agricultural and Related Economic Impacts report), based on calculations provided by Akinaka and Associates of the amount of water available after implementation of the CWRM D&O. The average demand of water in gallons per acre per day for each projected type of crop is discussed in Table 2-1 of the Draft EIS, which is now Table 2-2 of the Final EIS, entitled "Mahi Pono Farm Plan." We also note that Table 3-1 of the EIS provides a description of the Mahi Pono farm plan in the event that no Water Lease is issued.

Comment 11: *10-12 years required to “remediate” the land. What water is needed for this to occur?*

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Response 11: Your comment regarding 10-12 years required to “remediate” the land is unclear. Nowhere in the EIS or the technical studies is this stated. Section 2.1.5 of the EIS states:

An estimated 10 years will be required for Mahi Pono and lessees to remove volunteer sugarcane and weeds from the approximate 30,000 acres, amend soils, install field improvements, build warehouses and other structures, and plant crops.

This is also reflected in the technical study provided as Appendix I (Agricultural and Related Impacts). However please see Response #8 for the current and near-term agricultural activities and water uses. As the farming and agricultural uses expand, water needs will increase. Water required during the early years of the farm plan is anticipated to be less than that at full operations and will include water to control dust and to irrigate temporary ground-cover crops. As noted in Response #8 above, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

Comment 12: *The DEIS does not adequately integrate climate change scenarios*

Response 12: The EIS includes the most recent information regarding climate change within its analysis. As discussed in Section 4.3.1 of the Draft EIS:

Regular trade winds are key in driving the Hawai‘i’s hydrological cycle, generating rainfall which helps maintain Maui’s water supply. However, a recent study showed that Hawai‘i’s trade winds have decreased in frequency by approximately 30% over the past 37 years, from 291 days per year in 1973, to 210 days per year in 2009 (Garza et. al, 2012). The decrease in the trade winds could have serious implications for the Hawaiian Islands, including adversely impacting local agriculture, native ecosystems and endangered species, and the State’s limited freshwater supply.

Overall, the State of Hawai‘i is experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade

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winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014)...

Regarding East Maui:

Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. Such rainfall patterns increase the amount of stormwater runoff flowing through the region, including through the streams within the License Area that reach the shoreline. The expected climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. (SE & MRC, 2019).

Regarding Upcountry Maui:

Upcountry Maui covers a large range of elevation and area. The average temperature varies at different elevations. As elevation increases, the average temperature decreases. The Leeward side of Upcountry Maui is mostly dry and sunny. The Windward Side of Upcountry Maui tends to be wetter than the Leeward Side. Average annual rainfall ranges from 16-20 inches per year on the Leeward Side to more than 240 inches per year on the Windward Side (Draft Maui Island Water Use and Development Plan, March 2019). The KAP receives an average amount of total rainfall of 15 to 25 inches per year.

Climate change trends may increase the potential for altered habitats and conditions. Warming air temperatures could cause ecosystems to shift upslope and decline in size. Changes in precipitation may affect Upcountry Maui's ecosystems and communities include flooding, erosion, drought, and fire. Changes vary from island to island, and even valley to valley. The overarching trend for the State has been a decrease in total rainfall. A decrease in total rainfall, without a reliable source of water delivery, would increase the demand for water in Upcountry Maui for both domestic and agricultural purposes. The demands of water could be potentially minimized through the implementation of water conservation measures, however, the extent to which such efforts would serve to counter reduced levels of water service is uncertain.

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Regarding Central Maui:

Central Maui's climate is typical of Leeward coastal lowlands receiving little rainfall annually, and is relatively dry. The northeast areas receive more rain than the central and southern areas of Central Maui. The average annual rainfall ranges from less than 10 inches in the southern part of the isthmus to over 40 inches in the northeastern areas. Central Maui receives considerable amounts of sunshine, with average daily insolation ranging from slightly less than 450 calories per square centimeter per day in mauka areas to over 500 calories near Kahului.

Climate change trends may suggest an increased potential for the agricultural fields in Central Maui to experience longer, more intense, periods of drought. The overarching trend for the State has been a decrease in total rainfall. A decrease in rainfall would result in less water being conveyed to the agricultural fields. The water conveyed to the agricultural fields in Central Maui also plays a major role in the recharge of the Central Maui aquifer. Periods of prolonged and intense drought would further strain the aquifers in Central Maui that depend upon the water conveyed through the EMI Aqueduct System for recharge.

Note that Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed, as well as a study published by the United States Geological Survey (USGS) in 2019 as shown on pages 4-89 to 4-90 for East Maui, pages 4-92 for Central Maui, and noted in Section 4.2.2 of the Final EIS as shown on page 4-71 for East Maui and page 4-76 for Central Maui.

Hence, the EIS recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall. However, as noted in the USGS report cited in

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pages 4-89 to 4-90 of the Final EIS, East Maui could see an increase in rainfall due to future climate change trends.

Comment 13: *What percentage of the total amount of water being asked for does each of the following represent:*

- *Kula Agriculture Park?*
- *Nahiku residents?*
- *Upcountry Maui domestic use?*
- *DHHL projects?*

Response 13: Regarding the total of water estimated to be available for diversion is described in Section 2.1.2 of the EIS. Specifically, Section 2.1.2 of the EIS states:

With the issuance of the Water Lease under the Proposed Action, the EMI Aqueduct System could divert only up to the maximum allowable amount after compliance with the CWRM D&O from streams within the License Area, which is estimated to be approximately 87.95 mgd. The EMI Aqueduct System is estimated to divert an additional 4.37 mgd from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Māliko Gulch. Thus, under the Proposed Action, an estimated total of approximately 92.32 mgd ~~would~~ could be conveyed to supply the MDWS for users in Upcountry Maui-and the agricultural fields in Central Maui.

Hence, a maximum of approximately 92.32 mgd of stream surface water could be conveyed through the EMI Aqueduct System under the Proposed Action.

The EIS assumes under the Proposed Action that approximately an average of 7.1 mgd of East Maui surface water is conveyed to MDWS. That amount is comprised of water from the EMI Aqueduct System that is processed at Kamole-Weir WTP and used within the Upcountry Maui Water System, and non-potable water for the KAP, which receives water from the Hamakua Ditch (an extension of the Wailoa Ditch). By contractual agreement, KAP is entitled up to 1.5 mgd from the EMI Aqueduct System. The current configuration of the KAP water system, however, requires that 3.5 mgd be made available at Reservoir 40 through the Hāmākua Ditch to enable the consumption of 1.5 mgd at KAP. However, there is a recognized need for infrastructure improvements to the reservoir and pumps that serve the KAP and use existing deliveries from the EMI Aqueduct System more efficiently. With infrastructure improvements, the water that is supplied by the EMI Aqueduct System to MDWS and used at KAP will be able to supply both the existing KAP, and the 262-acre KAP expansion area.

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The MDWS serves water to a portion of the Nāhiku community. However, that water is not delivered through or sourced from the EMI Aqueduct System and therefore does not reduce the amount of water potentially available under the proposed Water Lease. The water for Nāhiku comes from EMI's West Makapipi Tunnel 2 (Well No. 4806-07), also known as the "Nāhiku Tunnel." According to the MDWS, EMI's Nāhiku Tunnel is the sole source of water for the MDWS Nāhiku Water Service Area. Per a 1973 Memorandum of Understanding, as amended, MDWS, can draw only up to 20,000 gallons of water per twenty-four hour day to serve the Nāhiku community. EMI continues to deliver water to the MDWS for the Nāhiku community pursuant to the agreement. However, that water delivery is premised upon EMI's continued receipt of permits or a lease from the State BLNR. Even though the agreement provides the MDWS a right to up to 20,000 gallons per day (gpd) per twenty-four hour day, EMI has accommodated the needs of the Nāhiku community, which have ranged between approximately 8,345 (2018) to 40,925 (2007) gpd on a daily basis, although supply of amounts over 20,000 gpd on any given day is not required under the agreement (MDWS, 2007 – 2018). Please note, the description of the Nāhiku water service from Section 2.1.3.3 of the Draft EIS, has been revised to take into account clarifications from the MDWS, as shown on pages 2-21 to 2-22 of the Final EIS and correspondence from MDWS dated July 23, 2020 to Akinaka & Associates has been added to the Final EIS as Appendix P.

Regarding DHHL projects, specific information regarding the DHHL's future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes

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Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui), as shown in pages 2-4 to 2-7 of the Final EIS. This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. As explained in pages 2-4 to 2-7 of the Final EIS, the DHHL water reservation process involves several steps before a reservation amount is formally identified and approved. However, as of this time, it is our understanding that DHHL has not yet made its water reservation request to CWRM.

Comment 14: *Lucienne de Naie, Ha`iku Community Association:*

Traditional and cultural practices were not addressed for each ahupua`a impacted by the lease.

Response 14: As explained in the Cultural Impact Assessment (CIA) included as EIS Appendix F, "The License Area includes portions of the modern judicial districts of Makawao and Hāna, the traditional moku of Hāmākua Loa and Ko`olau, and the following ahupua`a (traditional land division spanning from the mountain to the sea): Honopou, Huelo, Moku papa, Waipioiki, Waipionui, Hanehoi, West Hanawana, East Hanawana, Pu`uomaile, Pāpa`a`ea, West Makaīwa, East Makaīwa, Honomanū, Ke`anae, Wailua Nui, Wailua Iki, Pa`akea, Nāhiku, and Ko`olau." Literal translations of the moku (districts) and ahupua`a place names within the License Area are listed in Table 1 of the CIA. Cultural Surveys Hawaii (CSH), the preparer of the CIA, sought consultation with with Native Hawaiian Organizations, agencies, and community members including descendants of the area, in order to identify individuals with cultural expertise/and or knowledge of the ahupua`a where the License Area is located. Please note that while traditional and cultural practices were not specifically addressed by each ahupua`a, they were discussed from a regional perspective for entire License Area, as well as listed on a stream-by-stream basis within the Cultural Impact Assessment included as Appendix F of the Draft EIS. Section 4.6 of the Final EIS has been revised to more fully describe the cultural practices and related impacts for the streams within the License Area, including the non-petitioned streams as shown on pages 4-171 to 4-254. Please note that the CIA identified practices including fishing, gathering of rocks for traditional food preparation, and knowledge of, or access to, cultural sites, including but not limited to cultural sites in the Central Maui agricultural fields of Hāmākua Poko and Hāmākua Loa, a legendary pōhaku in Wahinepe`e, and Papanene Heiau as discussed in Section 4.5 and Section 4.6 of the EIS.

Comment 15: *Representatives from Huelo shared their mana`o with the social-impact assessment.*

Response 15: That is correct. Representatives from Huelo shared their mana`o as part of the Social Impact Assessment (SIA) process. The SIA is provided as EIS Appendix G, and

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summarized in Section 4.7.2 of the EIS. Huelo / Ha'ikū residents and farmers participated in focus groups held in conjunction with the preparation of the SIA, as reported in SIA Sections 4.1.2.2 and 4.2.2. Some participants live in the Huelo watershed area and generally downstream of the EMI Aqueduct System and many live and farm in areas adjacent to streams that are the subject to the CWRM D&O. Ha'ikū and Huelo impacts are entrenched in a social context. The social impact of diverting water is generational, one that has affected livelihoods, family cohesion, the ability to integrate with environment for food gathering and recreation, resource stewardship, and personal connections or disconnections with values inherent in their lifestyles.

As an outcome of these findings and others as documented in the SIA, the SIA recommended that community outreach be emphasized moving forward in conjunction with the Proposed Action. However, it is also noted that the terms and requirements of the Water Lease are at the discretion of the BLNR.

Comment 16: *Can the document only be utilized by A&B, or could this EIS be utilized by the Department of Water Supply, an independent water utility, or other entity that would like to put forth a bid for the water lease at public auction?*

Response 16: The EIS was prepared to support the application for the issuance of a long-term Water Lease for the purpose of developing, diverting, transporting and use of the State's East Maui waters through the EMI Aqueduct System for the purpose described in the EIS. The EIS also contemplates the environmental effects of variations on the Proposed Action, including scenarios where the amount of water permitted for the Water Lease is insufficient for the Mahi Pono farm plan as proposed, and for the MDWS. Thus, the EIS analyzes proposed uses of the water, but is not necessarily tied to a specific Water Lease lessee (although Section 1.3.3 of the Draft EIS explains how A&B, on May 14, 2001, requested that the State offer at public auction a long-term water lease under HRS § 171-58 for the, "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System). Hence, any party who intends to use the water in a manner consistent with the EIS analysis could, presumably, use the EIS to support a bid on the Water Lease at public auction. However, it is reasonable to assume that any other potential Water Lease lessee would also be required to meet the requirements of Chapter 343, HRS, should their proposed use of the water be inconsistent with what is presented in this EIS.

Comment 17: *Is this EIS only for one bidder? It isn't an open bidding process if there is only one bidder.*

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Response 17: It is our understanding, as discussed in the EIS, that any proposed lease of water from the State will go through a public auction process. Moreover, as discussed in Response #16 above, although the Water Lease goes to public auction, it is reasonable to assume that any other potential applicant would also be required to meet the requirements of Chapter 343, HRS, unless they propose to make use of the water in a manner consistent with the EIS analysis.

Comment 18: *The EIS assumes that the “natural stream conditions” are those that have been in existence following the diversion of 40-50 streams over a 100-year period. There is no data represented on pre-diversion conditions. Impacts cannot be adequately assessed without this data. There is a shifting baseline where conditions are assumed as normal when in fact they represent degradation of the natural ecosystems over time. Streams are deemed biologically unimportant based on their current post-diversion conditions, not on what their conditions should be assuming a more connected and functional pre-diversion ecosystem. (Prior to the 1870s)*

Response 18: Please note that although it is not scientifically possible to document impacts that first took place more than a century ago during pre-diversion conditions. However, the EIS does include historical information from a time prior to the construction of the EMI Aqueduct System. For example, Section 1.3 of the EIS includes a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui. The Archaeological Literature Review and Field Inspection report (EIS Appendix E), (which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe‘e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui) provides extensive history on the East Maui area pre-contact era.

Regarding your comment about the stream baseline conditions being presented solely as post-diversion conditions, this is not correct. The Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (the HSHEP model), provided as EIS Appendix A does not deem a stream "biologically unimportant based on their current post-diversion conditions" as you claim. Additionally, there is no shifting baseline within the HSHEP model. The HSHEP model uses all available occurrences of the species across the State to predict the suitability of a stream, reach and site scale variable to each species. Using the HSHEP model, data on water depth, habitat type, substrate, and stream width can be converted into suitability criteria and estimates of overall habitat area. In addition to habitat measures, stream discharge was measured upstream and downstream of diversions to help document the proportion of flow diverted. Within the HSHEP model, if a site is dewatered, habitat suitability goes to zero. As water is returned to the site, habitat suitability will increase. These effects are consistently applied

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throughout the HSHEP model so that it accounts for the relative changes in habitat suitability in response to different flow modifications.

Moreover, the Natural Condition scenario modeled in the HSHEP model provides an estimate of the amount of natural, undiverted habitat, for each of the native amphidromous stream animals. Given that it is impossible to go back in time and survey the streams prior to the 1870's and there is no data for pre-diversion conditions because there is no data prior to 1960 in the State Division of Aquatic Resources Database associated with stream surveys, this modeling scenario was created to present the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals, and therefore resulted in the maximum available habitat units predicted. The HSHEP model is summarized in Section 4.2.1 of the EIS. However, please note that Section 4.2.1 of the Final EIS has been revised, as show on pages 4-56 to 4-67, and the HSHEP model report provided as Final EIS Appendix A has been clarified.

Comment 19: *The DEIS assumes that the 22 streams with IIFS addresses all cultural and environmental concerns*

Response 19: Please note that the studies prepared for the EIS to assess cultural and environmental concerns are not limited to only the IIFS petitioned streams. The EIS and the nine technical studies associated with the EIS (see EIS Appendix A - I) cover Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. These analyses are provided for three areas, East Maui, Upcountry Maui, and Central Maui as defined within Chapter 4 of the EIS.

However, the analysis and requirements under the CWRM D&O are crucial to the environmental analysis of the proposed Water Lease because, as explained in Section 1.3.4 of the Draft EIS:

The June 20, 2018 CWRM D&O establishes a quantity of water that must remain in each stream at specified locations subject to the IIFS Petitions. The CWRM D&O does not specifically authorize or allocate amounts of water for offstream

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uses. The CWRM evaluated each of the streams under the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration potential for fish and other stream animals, recreational opportunities, and scenic values. Then the streams were looked at in an integrative approach with consideration for the overall ecological ramifications of the decision. The CWRM also considered the economic ramifications of its decision on offstream uses, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture.

Hence, the CWRM D&O was used as a basis for assessing the Proposed Action, but is clearly not representative of being the sole source of assessment within the EIS.

Specifically with respect to your comment alleging that the EIS assumes all cultural concerns were resolved by the issuance of the CWRM D&O, note that the CIA acknowledges that the Proposed Action may impact Native Hawaiian cultural resources and practices and provides for several recommendations to mitigate those impacts. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to ‘ōpae, ‘o ‘opu, pūpūlo ‘i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Honopou (Puniawa Tributary), Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili‘ula, Pa‘akea, Kapā‘ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua‘aka‘a Tributary, and Waia‘aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo‘i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject

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to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, shown on pages 4-158 to 4-159. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for

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cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Comment 20: *13 streams were left out of the IIFS process, and the impacts of these areas and the communities who live along them is completely unknown.*

Response 20: We respectfully disagree with your comment that the non-petitioned streams within the License Area were never assessed and that the impacts from diverting these streams are completely unknown. As a point of clarification, please note that while the Draft EIS identified 13 non-petitioned streams, that information has been corrected. There are only 12 non-petitioned streams within the License Area. In the Draft EIS Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which was subject to the CWRM D&O and ordered for connectivity restoration flow status. Moreover, the Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP Model) assessed all streams within the License Area that are, or were, diverted by the EMI Aqueduct System. Other technical studies prepared for the EIS also assess impacts that span both the petitioned and non-petitioned streams and related communities. The non-petitioned streams are all within the Huelo portion of

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the License Area; there are also several petitioned streams within the Huelo portion of the License Area, including streams that were ordered for full flow restoration under the CWRM D&O.

We acknowledge that the CWRM D&O did not set new IIFS for 12 streams within the License Area that are diverted by the EMI Aqueduct System as those streams were not included in the petitions filed by Native Hawaiian Legal Corporation on behalf of Nā Moku, Beatrice Kepani Kekahuna, Marjorie Wallet, and Elizabeth Lehua Lapenia. However, the CWRM D&O did take those streams into account. CWRM D&O at ii. Moreover, while 12 diverted License Area streams were not assessed pursuant to specific petitions to establish IIFS, those streams are subject to the 1988 IIFS set for the East Maui streams. Please note that the CWRM, as is evident from its website, both from its own research and in conjunction with USGS, has information on the License Area streams, including the non-petitioned streams, which information has been made available to the BLNR. Furthermore, under the revocable permits, initially annual reports, and now quarterly reports, are submitted by EMI to the BLNR, which identify the total amount of water being diverted from License Area measured at Honopou, i.e., water from both petitioned streams and non-petitioned streams. Hence, the 12 non-petitioned streams were included as part of the overall analysis of the EIS and associated technical studies. In terms of stream habitat, the HSHEP model provided as EIS Appendix A analyzed those streams to assess changes in native amphidromous stream animal habitat with respect to stream diversions which is summarized in Section 4.2.1 of the EIS in the section covering East Maui.

The HSHEP model is a spatially-referenced model with all diversions and stream segments within the License Area included. The overall summaries of stream results are derived from the impacts on stream segments above and below all major and minor stream diversions associated with the stream. The results from the HSHEP model provide an analysis of habitat impacts for petitioned and non-petitioned streams. Please refer to Appendix A of the EIS for more details regarding the HSHEP model and analysis.

One of these non-petitioned streams was also included in the analysis presented in EIS Appendix B, *East Maui Irrigation Assessment of Streams and the Ocean*, and summarized in Section 4.2.3 of the EIS regarding Coastal Waters. The study found that the effects of stream water on marine waters is minor in these habitats, which is supported by the physical processes associated with relatively small input of stream water to the vastly larger ocean environment. The prevailing condition of extreme mixing by physical forces is the most important factor in diminishing the zone of influence of stream water in the marine setting.

The study included as EIS Appendix C, *Terrestrial Flora and Fauna Technical Report*, was a regional report that analyzed impacts of the Proposed Action on the entire 33,000-acre License

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Area. This report is also summarized in Section 4.4 of the EIS. The study concluded that there is the potential for impacts to the flora and fauna within the License Area due to access by EMI staff, as well as any kind of public access that may occur. Hence, it recommends a number of mitigation measures to minimize any potential impacts.

Regarding historical and archeological resources, Cultural Surveys Hawai'i (CSH) conducted the archaeological literature review and field inspection (LRFI) report included in EIS Appendix E and which is summarized in Section 4.5 of the EIS. The report included an analysis of the natural and built environment of the License Area, a comprehensive review of traditional and historic background information of the region, a review of previous archaeological studies and findings in the region, and a field inspection of the License Area focused on inspecting the areas nearest to the EMI Aqueduct System infrastructure and access roads. Based on the research and analysis conducted for the LRFI, neither the Water Lease, nor the alternatives, is expected to have impacts archaeological historic properties within the License Area because none of these actions include significant related ground disturbance. Moreover, additional field work was conducted in response to comments received to the Draft EIS, but CSH researchers were unable to locate the historical resources mentioned by those who commented. The report assumes, however, that those historical and archeological resources do exist within the License Area, and that they could be adversely impacted with public access into the area. The LRFI also provides cultural resource management recommendations based on the extensive research and analysis conducted during the study, and similar to recommendations that were made for the Waikamoi Preserve during a cultural-historical study of East Maui (Maly and Maly 2006). For example, CSH recommends that any persons who are required to enter the License Area be made aware of the potential for discovery of undocumented surface historic properties such as walls, trails, terraces, mounds, and/or caves. These structures should be avoided, protected, and reported to the SHPD. The SHPD will determine if additional mitigation is required.

Similarly, the CIA for the Nāhiku, Ke'anae, Honomanū and Huelo License Areas prepared by CSH provided as Appendix F to the Draft EIS, and as further supplemented for the Final EIS, includes a regional analysis of the entire License Area, including the non-petitioned streams and the petitioned-streams. Section 4.6 of the Final EIS has been revised to more fully describe the cultural practices and related impacts for the streams within the License Area, including the non-petitioned streams as shown on pages 4-171 to 4-254.

Earthplan conducted a Social Impact Assessment (SIA) that is included in EIS Appendix G and summarized in Section 4.7.2 of the EIS. Focus groups convened for the purposes of identifying and assessing social impacts included Huelo / Ha'ikū residents and farmers. As discussed in Response #15 above, for this area referred to in Comment #20, the social impact of diverting water is generational, and one that has affected livelihoods, family cohesion, the ability to

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integrate with environment for food gathering and recreation, resource stewardship, and personal connections or disconnections with values inherent in their lifestyles.

Furthermore, economic and fiscal impacts, including agricultural related economic impacts are discussed in detail for the East Maui region. This information is included in Appendix H and Appendix I which are summarized in Sections 4.7.3 and 4.7.4 of the EIS respectively. These studies found that the Proposed Action would have little agricultural or economic impact to the East Maui region.

Specifically, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Comment 21: *The impacts of dams and diversion structures have not been assessed for fish passage.*

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Response 21: We respectfully disagree with your assertion that impacts of dams and diversion structures have not been assessed for fish passage. Entrainment and passage were modeled for every diversion including all of those within the non-petitioned streams as well as the IIFS petitioned streams based on four scenarios as presented in EIS Section 4.2.1 and Appendix A of the EIS. Impacts related to dams and diversion structures are discussed in Section 4.2.1 of the Final EIS as shown on pages 4-63 to 4-67.

However, please note that work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

However, please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not

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change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals.

Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

The two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped.

Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts.

Comment 22: *DHHL's allocation will belong to EMI until DHHL needs it. DHHL lands are legally entitled to this, and this water needs to be set aside.*

Response 22: Specific information regarding the DHHL's future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS, and updated in the Final EIS, as discussed in Response #13 above, and shown on pages 2-4 to 2-7 of the Final EIS. If a Water Lease is issued, it will be subject to DHHL's rights to reserve water sufficient to support current and future homestead needs as provided by § 221 of the Hawaiian Homes Commission Act. As clarified in the Final EIS, for the purposes of the EIS assessment, it has been assumed that all water from the Water Lease will be available for use by the Water Lease lessee and for the MDWS allocation. However, the DHHL has cautioned that in light of the fact that no water leases have been issued under HRS § 171-58, and the manner in which reservations are to be actualized has yet to be determined, in addition to any specifications made

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by the CWRM and BLNR regarding the Water Lease, a separate agreement between the lessor and the DHHL will be necessary to allow any temporary use of water reserved for DHHL. The EIS contemplates the effects of a reduction in the amount of water made available to the Water Lease lessee through the Reduced Water Volume alternative, which is described throughout Chapter 3 of the EIS. The EIS fully recognizes that the Water Lease would be subject to the DHHL rights to a water reservation.

Comment 23: *The Draft EIS states that a watershed-management plan will come at a later date. EMI is waiting for the State to conduct this plan. There is no assurance that this will happen within a reasonable time frame. This plan is an essential component of mitigating potential impacts associated with the spread of invasive species and loss of sensitive native habitat.*

Response 23: As discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown in pages 2-2 to 2-4.

Comment 24: *Old agreements (1940s and '50s) included management plans*

Response 24: It is not clear what old agreements your comment refers to. As discussed in Response #23 above, the Water Lease lessee is subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. Moreover, the existing East Maui Watershed Partnership (EMWP) Management Plan, prepared in July 2009 and amended in July 2018, has been attached as Appendix O to the Final EIS. As discussed in Section 2.1 of the Draft EIS, A&B was a founding member of the East Maui Watershed Partnership (EMWP), which was the first watershed partnership in the State of Hawai'i and which served as a model for other

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watershed partnerships throughout the State. Additional information regarding the EMWP has been added to Section 2.1 of the Final EIS as shown on pages 2-3 to 2-4.

As part of satisfying HRS § 171-58(e), we understand that the DLNR will work with each individual water lessee to determine the specific management actions, based on site-specific needs, that will result in the prevention and degradation of surface water and groundwater quantity and quality within the particular water lease area. Moreover, actions to be described in a watershed management plan will be informed by existing watershed management plans (such as the EMWP Management Plan).

Comment 25: *The East Maui Watershed partnership has left out the local community.*

Response 25: Your comment implies considerations that are beyond the scope of the EIS. Please refer to Response #1 above regarding the scope of the EIS. Please note, however, that the memberships of the watershed partnerships statewide typically include the landowners relevant to that specific watershed area, rather than the general community. Notably, the EMWP Management Plan highlights the importance of the community's role in accomplishing the EMWP Management Plan's goals.

Comment 26: *Repurposing of reservoirs and water-storage infrastructure is touted in the DEIS as being impossible based on cost constraints. This option needs to be explored and outlined in the DEIS.*

Response 26: The feasibility of added water storage was assessed in the Draft EIS in Section 3.1.1.3. The "added storage" alternative discussed in Section 3.1.1.3 of the Draft EIS considered, but ultimately dismissed, the alternative of upgrading existing, but out of service, reservoirs and constructing a large new reservoir. Regulatory, environmental, and safety concerns make these options, which involve major ground disturbance activities, infeasible. However, that assessment has been further explored within the Final EIS, as shown on pages 3-11 to 3-14.

Ultimately, added storage capacity cannot serve as a substitute for a source of water, but only to assure a more consistent availability of water between periods of surplus and deficit from a source. While reservoir/storage improvements might improve the efficiency of the Central Maui Field Irrigation System, those improvements would be at the cost of providing less recharge to the underlying Central Maui aquifers, which in turn will decrease the amount of brackish well water Mahi Pono can rely on for its irrigation needs. Moreover, the reservoir/storage improvements do not constitute a discrete alternative for providing an additional source of needed water, and instead represent at best a means by which the operational efficiency of the Central Maui Field Irrigation System may be improved.

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Additionally, the environmental impacts for developing new storage / reservoir facilities for the EMI Aqueduct System above Wailoa Ditch far outweigh the minimal benefits they will provide due to the fact that existing reservoirs / storage facilities are seldom full. That, coupled with the fact that the EMI Aqueduct System will be diverting less water under the proposed Water Lease than had been diverted in the past, means that most reservoir water levels are assumed to decrease even more, rendering this scenario infeasible as a means of supplementing whatever surface water is allocated under the proposed Water Lease.

Comment 27: *There are massive high-flow storm events because of climate change, and these events need to utilize the existing infrastructure effectively.*

Response 27: The EMI Aqueduct System is not designed to capture and convey high-volume freshet flows as discussed throughout the EIS. Specifically, Section 2.1.2 of the EIS states:

The EMI Aqueduct System was designed and is intended to be operated to capture and convey a major portion of the base flow from streams in the License Area to supply the former sugarcane operations in Central Maui. The EMI Aqueduct System is not designed to capture and convey short periods of high streamflow known as freshets that occur when it rains heavily in the upslope areas of the watershed. Such larger flows quickly overtop or bypass the diversions and remain in the streams. The system will only divert up to the capacity of the ditches to convey slow moving water along the very slight slopes of the ditches.

Comment 28: *The “ownership change” alternative was dismissed because it is speculative, and the change in ownership will “not enhance environmental quality.” This is not true.*

Response 28: With respect to environmental impact from the proposed Water Lease, we fail to see how the ownership of the EMI Aqueduct System alters the effects of diverting water from East Maui streams. If the system is used to divert stream water, the impacts in East Maui should remain the same. However, we acknowledge that no other entity has the background, experience, or knowledge that EMI has when it comes to operating the EMI Aqueduct System (as discussed in the EIS, EMI has been operating the system since the 1870s). Thus, alternative ownership could increase risks that would arise from lack of knowledge and experience.

Regarding the speculative nature of an ownership change, we maintain that such an alternative remains highly speculative. However, Section 3.1.2 has been updated in the Final EIS to take into account the report prepared by the County of Maui Board of Water Supply (BWS) Temporary Investigative Group (TIG) to explore options for ensuring public access to water,

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including the feasibility of purchasing and maintaining the EMI Aqueduct System (the TIG Report). See pages 3-19 to 3-20 of the Final EIS. The TIG Report was made public on October 16, 2019, after the publication of the Draft EIS, and a copy of the TIG Report has been provided as Appendix Q of the EIS.

Acquisition of the EMI Aqueduct System by the County or any other public entity remains purely speculative at this time. The EMI Aqueduct System is not for sale or lease, and forced acquisition of the system is projected to be prohibitively expensive, resulting in substantial costs to the public. It is noted that the TIG Report's proposal for water rates for the Central Maui agricultural fields is nearly ten times that of what is being charged at KAP and to Upcountry agricultural users. Such a dramatic increase in water rates would have associated economic, fiscal, and social impacts, Countywide. Moreover, should the County bid for the Water Lease, it would need to utilize the water in a fashion consistent with the analysis in this EIS (or complete the necessary environmental review for any use that is not considered in this EIS). Furthermore, much of the institutional knowledge needed to properly operate the EMI Aqueduct System would be lost under any change in ownership scenario. This could reduce the efficacy of the system, result in the incapability of new ownership to properly maintain it, and possibly lead to additional and unforeseen environmental impacts that would run contrary to the perceived enhancement of environmental quality that you infer.

Comment 29: *There needs to be a truthful analysis of ownership options.*

Response 29: Alternative ownership of the EMI Aqueduct System is acknowledged within the EIS and discussed in Section 3.1.2 of the EIS. Please see Response # 28 above. As discussed in EIS Section 3.1.2, the EMI Aqueduct System is privately owned and is not for sale. Moreover, any theoretical alternative owner of the system would be subject to an independent EIS process if it sought to obtain a water lease from the State unless the water use was consistent with the existing environmental analysis. The EIS fully discloses the fact that alternative ownership was raised during public scoping for the EIS, and the Final EIS provides a more robust discussion of this scenario, taking into account the TIG Report.

Comment 30: *There is no assessment of the current conditions of the 100-year-old system and how it could be redesigned for the current century, or if aspects of it are even necessary.*

Response 30: We assume that your comment relates to the physical condition of the EMI Aqueduct System. In this regard, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, "Measurements of Seepage Losses

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and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System. We also note that Appendix D of the EIS provides a Historical Structure Assessment East Maui Aqueduct System prepared by Mason Architects to provide an assessment of the historical significance of the EMI Aqueduct System.

Comment 31: *The future wastewater plant planned for Central Maui was not included in the DEIS as a potential water source to the central valley*

Response 31: Section 3.1.1.2 of the Draft EIS provides an assessment of using reclaimed water from the County's Wailuku-Kahului Wastewater Reclamation Facility (WWRF) as an alternative to the proposed Water Lease as a source of water. As discussed therein, this alternative was viewed as unreasonable due to various environmental factors and was therefore dismissed from further review. However, please note that discussion has been updated in the Final EIS to recognize, among other things, that the Kahului WWRF only has capacity for 5.5 mgd and not 7.9 mgd as stated in the Draft EIS. The updated discussion also acknowledges the County of Maui Department of Environmental Management's (DEM) desire to upgrade the Kahului WWRF plant to provide R-1 treatment capabilities in the future (as a project targeted for implementation as early as 2026-2028) but this upgrade currently has not been funded. It is noted that upgrading this facility to R-1 treatment standards is contingent upon the availability of County funding.

Section 3.1.1.2 of the Final EIS also includes a discussion about DEM's plans for a new wastewater treatment facility west of its Kahului WWRF, to be located off of Kuihelani Highway near Waiko Road and within Mahi Pono's fields in West Maui. These fields are located outside the service area of the EMI Aqueduct System. The Central Maui agricultural fields that are considered in this EIS are all east of Maui Veterans Highway. It is assumed any reclaimed water from the WWRF within the West Maui fields will remain in the area west of Maui Veterans Highway. Thus, not only is the development of this potential reclaimed water source uncertain, the proposed future WWRF would not be a reasonable replacement source of water for the Central Maui agricultural fields that Mahi Pono intends to irrigate with East Maui stream water. This discussion is shown on pages 3-9 to 3-11 of the Final EIS.

Comment 32: *Please provide a detailed inventory of all available water sources to the central valley.*

Response 32: Your Comment #32 is unclear as you do not specifically refer to which area of the Central valley is in question. Nonetheless, the Draft EIS provides a discussion of the 30,000-acre Central Maui agricultural fields and the waters available to it. At this time, the Central Maui agricultural fields are supplied by surface water that is delivered through the EMI Aqueduct

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System from East Maui. The Central Maui agricultural fields can be supplementally irrigated by existing wells as discussed in Section 2.1.4 of the EIS. Draft EIS Section 2.1.4 (Central Maui Field System) explains:

In addition to the surface water imported from the EMI Aqueduct System to the Central Maui field irrigation system, the irrigation infrastructure includes fifteen brackish water wells that can supplement surface water to approximately 17,200 acres of the plantation at the lower elevations (CWRM D&O, FOF 738). These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739).

Draft EIS Figure 2-5 (Central Maui Infrastructure Map) (Figure 2-7 in Final EIS) identifies the wells in the Central Maui agricultural fields. However, please note that Section 2.1.4, including the related Figures, has been revised in the Final EIS to more accurately describe the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono, and clarifies that Mahi Pono has access to only 10 brackish wells, as shown on page 2-25.

The reference to 15 brackish wells was derived from the CWRM D&O, Finding of Fact (FOF) 738, as that was the number of brackish wells that A&B utilized during its sugar cane operations. However, one of the 15 wells referred to, State Well No. 5128-002, does not serve the Central Maui agricultural fields and four of the other brackish wells are on lands that are not owned by Mahi Pono. As such, Mahi Pono has access to only 10 such wells. Draft EIS Figure 2-5 (Figure 2-7 in the Final EIS) has been revised, as shown on page 2-24 of the Final EIS, to more accurately depict the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields. Figure 2-8 has been added to the Final EIS to show the water sources that can be used to irrigate within the Central Maui agricultural fields.

Section 4.2.2 of the EIS provides a description and impact assessment of the groundwater resources available for the Central Maui agricultural fields and discusses how the system losses in the Central Maui Field Irrigation System (i.e., water lost to seepage and evaporation, and including other water uses, such as water used for reservoirs, fire protection, dust control, and hydroelectric uses) allows for seepage to enter the Pā'ia, and Kahului, and Ha'ikū aquifers. See pages 4-74 to 4-77 of the Final EIS.

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Comment 33: *Please provide detailed EMI infrastructure water-loss and –leakage statistics.*

Response 33: Please note that the EMI Aqueduct System does not experience system losses as noted in Response #30 above. Any water losses take place beyond the EMI Aqueduct System (i.e., past Kamole-Weir WTP) and within the Central Maui Field Irrigation System. Without the planned improvements to the Central Maui Field Irrigation System, approximately 22.7% of the water delivered to the Central Maui agricultural fields is accounted for as system losses in the Central Maui Field Irrigation System (i.e., water lost to seepage and evaporation, and including other water uses, such as water used for reservoirs, fire protection, dust control, and hydroelectric uses). Seepage loss within the Central Maui Field Irrigation System is recharged back into the groundwater in the Central Maui Aquifer System.

Comment 34: *Albert Perez, Maui Tomorrow:*

There is a huge need for stream gauges in the lease area. We have very few gauges currently. There should be a gauge above and below each diversion so that we know how much is going into the ditches and tunnels.

Response 34: EMI has 12 gauging stations located in several ditch locations across the License Area to monitor and manage East Maui ditch deliveries. These gauges measure the flow in the ditches only, using a system that includes optical encoders with float tape and data loggers. It is not feasible to measure flow in the streams, as there are limited areas that contain the necessary control points to accurately measure streamflow. EMI's 12 gauging stations includes seven gauges that were formerly operated and maintained by the USGS to calculate the total amount of water diverted from each of the four sections of the License Area. Those gauges were also in the ditches, not on individual streams. Due to USGS cost cutting, in 1986 EMI took over the responsibility of operation and maintenance of those seven former USGS gauges. At that time, the State began assessing a flat rental fee rather than one based on the specific amount of water collected in each separate section of the License Area. EMI contracts with the USGS to conduct quarterly discharge measurements to verify the accuracy of the gauges at the Honopou boundary of the License Area, which measure the total water withdrawn from the Collection Area.

It is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. As noted in the CWRM D&O FOF 50, EMI takes measurements at the boundary of each section of the License Area and at its gauging stations at Maliko Gulch. However, for the purpose of measuring the

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aggregate flow from entire License Area, the measurements taken at the Honopou boundary were used.

Comment 35: *Norman Franco, Board of Water Supply:*

Looked at comprehensive alternatives to what is the present system: One example is from Arizona, where a farmer makes a request for a certain number of gallons, and the system releases that exact amount to the farmer.

Response 35: The Mahi Pono farm plan will make an efficient use of water. Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown on page 2-25. It should also be noted that the amount of water diverted at any given time through the EMI Aqueduct System will be only what is needed to meet actual needs.

Comment 36: *There is a huge amount of waste and not good management of the resource that we have. The DEIS does not make note of any of this waste, or provide options for better management of the EMI system to increase conservation and better optimize the valuable water resource.*

Response 36: Your Comment #36 is unclear as you state that there is a huge amount of waste but do not explain what is being wasted or how this waste is taking place. Through the public comment process on this EIS, many have made the assertion that water is being wasted. As it relates to the EMI Aqueduct System, as discussed in Response #30 above, the USGS report (“Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)”), indicates that the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System.

As discussed in Response #33 above, approximately 22.7% of the water delivered to the Central Maui agricultural fields is accounted for as system losses in the Central Maui Field Irrigation System (i.e., water lost to seepage and evaporation, and including other water uses, such as water used for reservoirs, fire protection, dust control, and hydroelectric uses). Seepage loss within the

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Central Maui Field Irrigation System is recharged back into the groundwater in the Central Maui Aquifer System.

Regarding your comment about options for better management, in making decisions regarding the proposed Water Lease, we note that surface water, being a public trust resource, means that the Proposed Action requires the BLNR, as the public trustee of the water sources proposed for Water Lease to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

Comment 37: *It's important to note that the ditch is an "easement." You're buying the easement, not the land that A&B owns. The cost should be understood by an appraisal when considering purchasing the system.*

Response 37: Please note the ditch (i.e. EMI Aqueduct System) is not an "easement" as you indicated. The 1938 Agreement between A&B/EMI (referred to as "the Company") and the Territory of Hawai'i, which has been added to the final EIS as Appendix R, acknowledges EMI's ownership of the EMI Aqueduct System. Pursuant to the 1938 Agreement, the Territory of Hawai'i (now the State) and EMI each granted to the other "perpetual" easements to those portions of the EMI Aqueduct System located on the other's lands per certain conditions. Hence, any purchase of the EMI Aqueduct System would include, amongst other matters, the cost of all infrastructure, as well as an interest in the land through which the EMI Aqueduct System passes.

Comment 38: *Eva Blumenstein, Department of Water Supply:*

Prep notice for 2016 recommendations:

- *Address the interaction between groundwater in the ditch area and in the central valley*
- *Costs should be included (O&M, capital costs, etc.)*

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Response 38: The interaction of groundwater in the ditch area, by which we mean the East Maui License Area, and the central valley, by which we mean the Central Maui agricultural fields, is discussed in Section 4.2.2 of the EIS, which is the section that assesses groundwater, discusses interaction of groundwater in both East Maui and Central Maui.

The EIS explains that East Maui is within the MDWS's Ko'olau Aquifer Sector which includes four aquifer systems: Ha'ikū, Honopou, Waikamoi, and Ke'anae. While no groundwater is transferred from the Ko'olau Aquifer Sector, surface water is conveyed from the sector to the Central Aquifer Sector via the EMI Aqueduct System. Since surface and groundwater interchange depends on the underlying geology, the increase in surface flow since the cessation of sugar cultivation in 2016 also contributes to an increase in groundwater in East Maui.

Specifically, as stated within Section 4.2.2 of the EIS regarding potential impacts to East Maui from the proposed Water Lease:

Groundwater levels are expected to be greater than historic levels due to increased recharge from stream restoration actions under the CWRM D&O. Moreover, according to a USGS publication (2019) on estimating the groundwater of Maui through 2035, the Ko'olau Aquifer System is expected to see an increase in groundwater from recharge rates due to changes in rainfall patterns from future climate change trends. Thus, even lesser impacts to East Maui groundwater are anticipated as a result of the Proposed Action.

While the Central Aquifer Sector has generally low SY numbers for groundwater pumpage, it is important to note that calculations of SY do not factor in recharge from the surface water diversions. Under the Proposed Action, the wells in Central Maui are not expected to yield as much as when sugar was cultivated in the Central Maui agricultural fields. Significant recharge did occur for the Central Maui aquifers when sugar was in cultivation as a result of the seepage / system losses from the Central Maui Field Irrigation System which allowed for high pumpage rates exceeding the SY. Thus, under the Proposed Action, it is assumed that at full operation of the Mahi Pono farm planthe Central Maui Field Irrigation System losses would continue to add to the recharge the Central Maui aquifers, but in an amount that is less than when sugar was cultivated. Additionally, the salinity of the water in the 10 wells available to Mahi Pono is likely to increase, also as a result of the lower level of aquifer recharge. Furthermore, when sugar was cultivated, the 70 mgd of brackish water used by HC&S was sourced from 14 wells, but Mahi Pono only has access to 10 wells.

Regarding your comment about the operation and maintenance (O&M) costs associated with running the EMI Aqueduct System, these are included in the Economic and Fiscal Impact Study

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(Appendix H) report and discussed in Section 4.7.3.1 of the Draft EIS. As stated in Section 4.7.3.1.d of the Draft EIS, “*Due to the nature of the EMI Aqueduct System, the operational costs are largely fixed, with minimal variable costs.*” Total operational costs for labor, fringe benefits, materials, professional services, taxes, maintenance, anticipated rental payments to the State for the Water Lease, and other expenses are projected to be approximately \$2.2 million per year (Munekiyo, Updated 2020).

Comment 39: *The Water Use and Development Plan:*

- *Diversify the sources (recycled water, climate adapted crops, conservation)*

Response 39: The intent of your Comment #39 is unclear. Regarding the Water Use and Development Plan, however, please note that this document was used widely as a reference throughout the EIS. f

As for potential diversification of water sources, please note that Chapter 3 of the Draft EIS identified alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului WWRF, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were discussed, but ultimately not assessed to the same degree as (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Moreover, based on comments received on the Draft EIS, the assessment of those water source previously considered but ultimately dismissed from review has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the Final EIS.

Your comment about conservation in terms of diversification of source is unclear. However, we note that Mahi Pono expects to invest over \$20 million to increase the efficiency of its private Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir). As a part of this upgrade Mahi Pono's irrigation engineering team is also designing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycle and re-use all water used in Mahi Pono's processing plants; and (3) integrate various live technology feeds to constantly monitor plant, soil, and tree health.

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It is unclear what is meant by climate-appropriate crops, however, please note that all the crops in the Mahi Pono farm plan are well suited for the climate in Central Maui. However, it should be noted that Mahi Pono has implemented several water saving strategies for the Central Maui agricultural fields, including the following:

- Planting windbreaks in the fields.
- Incorporating significant uses of weed mat along plant lines, which will reduce evapotranspiration and erosion.
- Mowing rather than plowing inter-rows to preserve organic matter and keep cover to prevent soil erosion.
- Operating within the terms of a Conservation Plan from NRCS, which includes swales and diversions for erosion protection,
- Practicing rotational grazing of livestock,
- Planting permanent tree crops that will develop canopies that will assist with soil moisture retention and reduce evapotranspiration.

This information regarding water saving strategies has been added to Section 2.1.4 of the Final EIS, as shown on pages 2-25 to 2-27.

Comment 40: *Gravity-fed surface water is the most cost-effective from the County's perspective.*

Response 40: We concur with your Comment #40 above. Typically gravity surface diversion systems are cost-effective as they do not need to use energy to pump the water. Conversely pumping water to higher elevations requires a lot of energy which can be costly when required. The EMI Aqueduct System is a gravity-fed water delivery system.

Comment 41: *Caleb Rowe, Department of the Corporation Counsel:*

30-year-lease application to BLNR

- o *Continued use of the diversions*

Response 41: We concur that under the Proposed Action (issuance of a long-term Water Lease) the EMI Aqueduct System would continue to divert water from the License Area.

Comment 44: *IIFS before CWRM*

- o *CWRM sets how much water needs to be left in the streams to allow for biodiversity, cultural activities, and view plains.*
- o *27 streams received IIFS, and the ruling was not appealed to the Supreme Court (first in history)*
- o *IIFS can be changed at the behest of the community*

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Response 44: We concur that the IIFS under the CWRM D&O establishes a quantity of water that must remain in the streams at specified locations, as discussed in Section 1.3.4 of the Draft EIS:

The June 20, 2018 CWRM D&O establishes a quantity of water that must remain in each stream at specified locations subject to the IIFS Petitions. The CWRM D&O does not specifically authorize or allocate amounts of water for offstream uses. The CWRM evaluated each of the streams under the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration potential for fish and other stream animals, recreational opportunities, and scenic values. Then the streams were looked at in an integrative approach with consideration for the overall ecological ramifications of the decision. The CWRM also considered the economic ramifications of its decision on offstream uses, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture.

Theoretical models of un-diverted total and base flows were used in the majority of the streams to set the IIFS. The IIFS is a numeric flow rate, measured in cubic feet per second (cfs) that must remain in the stream at a certain location. The CWRM used a median base flow (BFQ₅₀) to make their decision, which is an amount of stream flow that can be expected to be found in the stream at least 50% of the time. Base flow is a smaller component of the stream's total flow. Total flow includes water input from normal rainfall and storm events. Depending on the location, the base flow standard can vary, therefore it is typically measured at a lower elevation downstream that is more accessible.

To set the IIFS, the CWRM grouped the streams into four broad categories with different objectives and management strategies: (i) conveyance of water to kalo growing areas for community use; (ii) water for streams with high biological value, (iii) water for streams that have barriers to biological or ecological improvements, and (iv) noninstream use of water for municipal and agricultural uses. (See Figure 1-3).

Only two of the petitioned streams that are diverted by the EMI Aqueduct System (Waia'aka and Wahinepe'e Streams) did not have their IIFS amended. Twelve diverted streams within the License Area were not subject to any petitions (the non-petitioned streams) and therefore maintain their status quo flow standards.

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Regarding your comment that CWRM set IIFS for 27 streams, please note as discussed in Section 1.3.4 of the Draft EIS, the CWRM found that there were 24, not 27, streams that were the subject of the contested case. The difference being that (i) Waikani is not a stream but a waterfall of Wailuānui Stream; (ii) Alo is a tributary of Waikamoi Stream; (iii) Pua‘aka‘a is a tributary of Kopili‘ula Stream; and (iv) Pi‘ina‘au and Palauhulu are separate streams that join together before reaching the ocean (CWRM D&O, FOF 56). You are correct that no party appealed the CWRM D&O.

For clarification, the State Water Code, HRS Chapter 174C, dictates the process and criteria for amending the IIFS for streams.

Comment 43: *BLNR can use CWRM’s IIFS numbers, but they do not have to. They could impose their own determinations for the 13 streams that do not have an IIFS.*

Response 43: Your Comment #43 above is unclear. The CWRM D&O is a separate action that must be complied with regardless of the issuance of the Water Lease. However, the BLNR has the authority develop the terms and conditions of the Water Lease, which could theoretically have its own water diversion restrictions on streams, including those that were not subject to the CWRM D&O. The BLNR, however, does not have the authority to establish any new IIFS.

Comment 44: *Currently in the courts over the 2019 “revocable permits.” The contested case hearing was waiting for the DEIS to be completed.*

Response 44: Your comment is unclear. However, it is acknowledged that there are pending lawsuits on the various revocable permits. There is also a pending contested case hearing on the request from 2001 that the BLNR issue a water lease at public auction. An EIS must be completed before the Water Lease matter can move forward.

Comment 45: *Zack Williams, East Maui resident:*

There haven’t been any studies conducted that explain why there is no connectivity between the mountain and the ocean at some of the lower-altitude streams, referencing Nahiku and Makapipi streams.

Response 45: To clarify, Makapipi Stream is located in the Nāhiku area, but we are unaware of a stream referred to as Nāhiku Stream. Please note that pursuant to the CWRM D&O, Makapipi Stream has been fully restored as noted within Section 1.3.4 of the Draft EIS. Therefore, connectivity is not an issue.

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Comment 46: *EMI should allow for bids on improving and upkeeping their tunnels and gates, especially in Nahiku.*

Response 46: Your comments are acknowledged. However, this is outside the scope of the EIS. Please refer to Response #1 above regarding the scope of the EIS. For clarification, please note that the description of the Nāhiku water service from Section 2.1.3.3 of the Draft EIS, has been revised to take into account clarifications from the MDWS after the publication of the Draft EIS. See pages 2-21 to 2-22 of the Final EIS. The water provided to the MDWS for Nāhiku is not provided from the EMI Aqueduct System or the water requested for the Water Lease. As confirmed by MDWS, the Nāhiku Tunnel is the sole source of water for the MDWS Nāhiku Water Service Area. It is also our understanding that EMI developed and owns the Nāhiku Tunnel. Per a 1973 Memorandum of Understanding, as amended, MDWS can draw up to 20,000 gallons of water per twenty-four hour day to serve the Nāhiku community. EMI continues to deliver water to the MDWS for the Nāhiku community pursuant to the agreement. However, that continued delivery is premised upon EMI's continued receipt of permits or a lease from the State BLNR.

Regarding the upkeep and maintenance of the EMI Aqueduct System, as discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7, under the Proposed Action, EMI's "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. EMI's maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System.

Comment 47: *The impacts to groundwater from diversion systems are not addressed in the Draft EIS.*

Response 49: We disagree with your comment that groundwater impacts were not addressed in the Draft EIS. Section 4.2.2 (Groundwater) of the Draft EIS addresses the impacts of the Proposed Action to groundwater. Due to the age of the diversions of the EMI Aqueduct System, we do not know of any past studies that show the condition of the aquifer in East Maui prior to the diversions being constructed. However, the current sustainable yield in the Ko'olau Aquifer System, which underlies East Maui, is 152 mgd. This has been clarified in Section 4.2.2 of the Final EIS, as shown on pages 4-69 to 4-71.

This sustainable yield number is high due to climatic conditions topography and geology of the area. The surface geology of East Maui is comprised of highly permeable lava flow remnants of

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the Hāna Volcanic Series, which allows rainfall to easily penetrate and recharge groundwater bodies in the region. Under the Proposed Action, groundwater levels, in general, are expected to be greater than historic levels in the Ko‘olau Aquifer Sector due to increased recharge from stream restoration actions under the CWRM D&O. Therefore, adverse impacts to groundwater and the aquifer in East Maui are not anticipated. Moreover, a USGS report published in 2019 identifies certain aquifer sectors and aquifer systems that will experience either increases or decreases due to climate projections. In the scenarios presented in the USGS report, the aquifer systems in the Ko‘olau Aquifer Sector are projected to see some of the largest increases in recharge. Please see page 4-71 and pages 4-89 to 4-90 of the Final EIS.

Regarding the impacts to groundwater in Central Maui from the stream diversions in East Maui, the above mentioned USGS (2019) report anticipates that there will be decreases in recharge due to changes in rainfall patterns from future climate change trends. However, as discussed in Section 4.2.2 of the Draft EIS:

SY does not account for water transfers, including surface water conveyed to the Central Maui Aquifer Sector from the Ko‘olau Aquifer Sector by the EMI Aqueduct System. Such imported water for irrigation flowing past the root zone of crops enters the aquifer from which it can be pumped and reused. According to the Draft Maui Island Water Use and Development Plan (March 2019), the “impact on ‘available’ groundwater that can be extracted from the Kahului and Pā‘ia aquifers from irrigation return flow is highly uncertain since the cessation of sugarcane cultivation in 2016” (p. 18). The plan further notes that there are no monitoring wells in the Central Aquifer Sector to gage water level changes over time. Nevertheless a simulated scenario in a 2008 USGS study suggests that the complete removal of irrigation return recharge would decrease water levels and increase salinity in the Central Maui Aquifer Sector (Akinaka, 2019).

Hence, the Central Aquifer Sector has generally low SY numbers. However, the numbers do not take into account the recharge that occurs from system losses (i.e., water lost to seepage and evaporation, and including other water uses, such as water used for reservoirs, fire protection, dust control, and hydroelectric uses) from the Central Maui Field Irrigation System within the Central Maui agricultural fields. Some portion of this seepage would enter the Pā‘ia, and Kahului, and Ha‘ikū aquifers, and some amount of the water used for irrigation would seep past the root zone and also enter the aquifers. Little is known about the exact relationship between the irrigation return water and how much could be reused as groundwater. However, the use of East Maui surface water to irrigate the Central Maui agricultural fields has long supplemented the underlying aquifers, and a similar relationship will continue under the Proposed Action, essentially constituting a beneficial impact to the Central Maui aquifers, particularly the Pā‘ia

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and Kahului aquifers, albeit at a smaller scale than when sugarcane was being cultivated and more East Maui water was imported into Central Maui. Thus, under the Proposed Action, it is assumed that at full operation of the Mahi Pono farm plan, system losses within the Central Maui agricultural fields would add to the recharge of the aquifers underlying the Central Maui agricultural fields as discussed in Section 4.2.2 of the Final EIS regarding Central Maui groundwater, updated as shown on pages 4-74 to 4-77.

Comment 48: *The Nahiku portion of EMI's water diversion should be condemned.*

Response 48: Your comment is unclear, but condemnation suggests governmental acquisition of a portion of the EMI Aqueduct System. The purpose of such acquisition is unclear within the context of water for Nāhiku. As discussed in Response #46 above, according to MDWS, the Nāhiku Tunnel is the sole source of water for the MDWS Nāhiku Water Service Area. It is also our understanding that EMI developed and owns the development tunnel that is the source of the water. Per a 1973 Memorandum of Understanding, as amended, MDWS can draw up to 20,000 gallons of water per twenty-four hour day to serve the Nāhiku community. EMI continues to deliver water to the MDWS for the Nāhiku community pursuant to the agreement. However, that water delivery is premised upon EMI's continued receipt of permits or a lease from the State BLNR. Even though the agreement provides the MDWS a right to up to 20,000 gpd per twenty-four hour day, EMI has accommodated the needs of the Nāhiku community, which have ranged between approximately 8,345 (2018) to 40,925 (2007) gpd on a daily basis, although supply of amounts over 20,000 gpd on any given day is not required under the agreement (MDWS, 2007 – 2018).

Comment 49: *Joss Akoi, East Maui resident:*

Social and community impacts need to be further addressed in the Draft EIS.

Response 49: The Draft EIS contains a robust discussion about social and community impacts based upon work done by Earthplan as documented in the SIA (EIS Appendix G) and summarized in Section 4.7.2 of the EIS. It is not clear from your comment what information you believe is missing from those reports. Potential impacts and recommended mitigations on social impacts identified in the SIA are discussed fully in detail in Section 4.7.2 of the EIS which has been expanded on to include a discussion related to cumulative social impacts. Specifically, Section 4.7.2, as it relates to East Maui states:

East Maui residents, farmers and cultural practitioners have been advocating for the reduction of stream diversions and the return of full stream flows. Focus group participants and interviewees stressed that previous water leases have had

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significant impact on their culture, social well-being and generational ability to thrive in East Maui. While the CWRM D&O addresses or mitigates that impact to some degree, the proposed Water Lease would still affect streams in their area...

Two areas of mitigative measures are recommended for consideration, should the proposed Water Lease be granted by the BLNR. These measures are intended to establish an ongoing working relationship between the community, Mahi Pono and EMI, and related public agencies, as well as continue resolution with East Maui communities.

It is recommended that interest groups, or stakeholder groups, are clearly defined so that there is recognition of who will be affected by the proposed Water Lease. Groups should include geographic communities, environmental, agriculture and business interests, and public agencies. Each group would be encouraged to reach consensus on their own needs, concerns, opportunities and possible solutions.

A starting point for identifying stakeholder groups could be the interviewees and focus group participants that participated in Earthplan's SIA and their networks.

It is recommended that interest groups are equitably represented in a "Core Working Group" that would serve as a forum for exchanging ideas and collaborative efforts, as well as provide feedback and suggestions to Mahi Pono. Each member of the Core Working Group would be expected to reach out to their own networks to extend the discussion beyond the Core Working Group. While there would likely be strong differences in perspectives and opinions, the Core Working Group would need to find ways to establish core principles, common ground and manageable solutions.

The fundamental value that will help bring people to the same table is trust. The proposed Water Lease has elicited skepticism and distrust over many decades, and these feelings prevent willingness for participating in mediation and collaboration. While developing trust among the various groups will be challenging, the first step is transparency. Being open about intent, plans, and activities can begin to establish credibility and open the door to dialogue.

Specifically for the Ke'anae – Wailuānui community to move past historical impacts, there needs to be established a point of departure. Mitigation needs to go beyond the physical restoration of streams. It needs to address the social context

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and include apology and reconciliation. This needs to be done within a cultural foundation that binds the community together, and key players, including Mahi Pono, public agencies and elected officials. The manner and forum for this process should be defined by the cultural leaders integral with the process

The socio-economic impacts of the Proposed Action are addressed at length in Section 4.7 of the Draft EIS, and in further detail in Appendices G through I (Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report). Draft EIS Section 4.7 has subsections addressing impacts to populations and impacts (Section 4.7.1), impacts to social characteristics (Section 4.7.2), impacts to the economy and other fiscal considerations (4.7.3), and impacts to the agricultural economy. (4.7.4). The potential socio-economic impacts of the alternatives to the Proposed Action considered by the Draft EIS are analyzed in Section 3.4.11 (Social Characteristics), 3.4.12 (Economic and Fiscal Resources), and 3.4.13 (Agricultural and Related Economic Resources). The Draft EIS thoroughly addressed cumulative socio-economic impacts in Section 4.17. That discussion has been further supplemented by updates in the Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report as shown on pages 4-331 to 4-336 of the Final EIS.

Comment 50: *There isn't enough water for the Kuleana farmers who were once ensured water rights by Prince Jonah Kūhiō Kalaniana'ole. Hawai'i's history needs to be better documented and considered.*

Response 50: Regarding your comment about the water rights of kuleana farms, the Hawai'i Supreme Court has determined that those rights consist of the rights to the use of water "appurtenant" to and utilized by certain parcels of land at the time of their original conversion into fee simple land, when title was confirmed by the Land Commission Award and title conveyed by the issuance of a Royal Patent. *Reppun v. Board of Water Supply*, 65 Hawai'i 531, 551; 656 P. 2d 57, 71 (1982).

The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that "existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted." See CWRM D&O FOF 54. Moreover, the prior water licenses issued to EMI in the past continued to recognize the rights of other property owners "for domestic purposes and the irrigation of kuleanas entitled to the same." See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby "The State reserves the right...to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally

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protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water. . . .” It is expected that the lessee under the Water Lease would be subject to similar requirements and would therefore not impair the "water rights" of "Kuleana farmers."

With regard to the East Maui streams in the License Area covered by the CWRM D&O, the uses of water by those who registered diversions claiming “appurtenant”, or “kuleana” rights were analyzed in detail separately with regard to each stream. The Proposed Action assessed under this EIS contemplates a Water Lease that would be in full compliance with the limitations set forth under the CWRM D&O.

Regarding your comment that Hawai‘i history needs to be better documented and considered, Section 1.3 of the EIS includes a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui. The Archaeological Literature Review and Field Inspection (EIS Appendix E), (which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe‘e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui), provides information about the precontact to modern times in East Maui.

Comment 51: John Longmire, East Maui resident:

Native Hawaiian practices and reliance on the streams will be affected if the water lease is granted; however, studies and concerns regarding these potential impacts are not adequately documented in the Draft EIS.

Response 51: You have not provide any basis for your comment that potential impacts to native Hawaiian practices and reliance on streams have not been adequately documented in the Draft EIS. We believe the Draft EIS adequately documented such impacts, as well as other relevant environmental impacts. As it relates to traditional and cultural practices within the East Maui area, the CIA and Section 4.6 of the EIS acknowledges that the Proposed Action may impact Native Hawaiian cultural resources and practices and provides for several recommendations to mitigate those impacts. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, potential impacts presented in Section 4.6 of the Draft EIS include the following:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to ‘ōpae, ‘o‘opu, pūpūlo‘i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail);

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Neritinu graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui.

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However, based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, as shown on pages 4-158 to 4-159 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action as shown on pages 4-239 to 4-252 of the Final EIS.

CSH offers specific recommendations to mitigate impact to Native Hawaiian practices and reliance on streams, summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of optical encoders with float tape and data loggers within the EMI Aqueduct System; 2) notify and ensure appropriate training of any persons required to enter the License Area regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Comment 52: *Family's property borders an EMI easement, and because of this, we have encountered barriers to development of the property. Impacts to smaller family properties, and identifying which properties, should be acknowledged so that people are aware if they may be or are already implicated.*

Response 52: Specific discussions of impacts on individual property owners is beyond the scope of the EIS. Please see Response #1 above regarding the scope of the EIS. However, we note that the Proposed Action, including operation of the EMI Aqueduct System, would be subject to compliance with all applicable and enforceable land use plans and policies, which are discussed in Chapter 5 of the Draft EIS. The Draft EIS also contains numerous graphics showing the property locations for the proposed Water Lease and also identifies the proposed License Area by tax map key.

Comment 53: *Councilmember Michael J. Molina:*

The total amount of water to be diverted from non-restored streams should be identified. The percentage of water to be diverted from non-restored streams should also be disclosed.

Response 53: Please note that as discussed in Response #34 above, it is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams,

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which caused gauges to wash away. As noted in the CWRM D&O FOF EMI takes measurements at the boundary of each section of the License Area and at its gauging stations at Maliko Gulch. However, for the purpose of measuring the aggregate flow from entire License Area, the measurements taken at the Honopou boundary were used.

However, the total amount of water that could be diverted from the License Area after taking into account all of the flow restoration requirements under the CWRM D&O is provided in the EIS, and that estimated available median flow is 87.95 mgd. This information is provided in several sections of the EIS including, for example, Section 2.1.2.

Comment 54: *The number of streams and the names of the streams where water is to be diverted should be defined.*

Response 54: The information you requested was provided in the Draft EIS in Section 1.3.4.1 and summarized in Table 1-3. This Section and table, which has been renewed to Petitioned and Non-Petitioned Streams – 2018 IIFS D&O Flow Restoration Table, have been revised in the Final EIS for further clarification based on comments received on the Draft EIS as shown on pages 1-13 to 1-24 of the Final EIS.

Comment 55: *The amount of water to be diverted from partially restored streams should be disclosed.*

Response 55: The total amount of water that could be diverted from the License Area after taking into account all of the flow restoration requirements under the CWRM D&O is provided in the EIS, and that estimated available median flow is 87.95 mgd. Obviously that figure does not include any flow from the streams that were ordered for full flow restoration. It is comprised of flow from the non-petitioned streams and the streams that were ordered to have partial flow restoration and, in two instances, petitioned-streams for which CWRM did not establish any new IIFS.

Comment 56: *The Proposed Action of the Draft EIS states: “The amount of water allowed to be diverted by the Water Lease will be significantly less than the amount diverted for sugar cultivation.”*

- *There should be a comparison drawn between the amount of water proposed to be diverted compared to the water diverted for sugar.*

Response 56: The Draft EIS included a comparison between the amount of water proposed to be diverted under the Proposed Action compared to the amount of water that was diverted for sugar. Specifically, Section 2.1.2 of the Draft EIS states:

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Up until 1986, when the first return of water was made to the East Maui streams, the long-term average delivery by the EMI Aqueduct System was 165 mgd (CWRM D&O, FOF 519) before any use of the water by the MDWS or HC&S. In 2001, the CWRM began the process toward its D&O for several East Maui streams that further changed the amount of water available for delivery to Upcountry Maui and to the Central Maui agricultural fields. Based on these changes to the system, a more recent history of flow deliveries from the EMI Aqueduct System was computed from 1987 to 2006 (20 year time period). When analyzing the delivery data at Honopou Stream and Maliko Gulch, the median (Q50) flow at these areas for this time period was 135.58 mgd at Honopou Stream and 146.64 mgd at Maliko Gulch (Akinaka, 2019).

Compliance with the June 2018 CWRM D&O requires modifications to many of the stream diversion works that are part of the EMI Aqueduct System. . . . the amount of water that may be diverted should the Water Lease be issued is substantially less than the amount that was diverted during normal sugar production. For example, in 2006 it is estimated that the EMI Aqueduct System delivered approximately 156.69 mgd at Maliko Gulch, whereas under the CWRM D&O, it is estimated that the delivery at Maliko Gulch will be approximately 92.32 mgd (Akinaka, 2019).

The median flow required by the CWRM D&O provides an estimated available median flow at Honopou Stream of 87.95 mgd, where the EMI Aqueduct System leaves the License Area. Beyond the License Area, the diverted streams only provide supplemental ditch flow when License Area diversions are low. The amount that can be added is relatively low because when rainfall is high in East Maui, the ditches are fuller and there is little needed to supplement the flow. And, when rainfall is low in East Maui, the streams west of Honopou Stream have less flow in them as they are in an area that receives less rainfall than areas further east. During drier (low flow) periods, it is estimated that 4.37 mgd is available to supplement the EMI Aqueduct System between Honopou Stream and Maliko Gulch. With this added flow, the estimated median flow available beyond Maliko Gulch for use in Upcountry Maui and the Central Maui fields is estimated to be 92.32 mgd (Akinaka, 2019).

Comment 57: *Mahi Pono should be a party to this proposed Draft EIS and water lease since they will be directly benefitting from the diversion of these waters.*

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Response 57: It is not clear what you mean by Mahi Pono being a "party" to this EIS or the Water Lease. This EIS is being prepared by A&B pursuant to orders issued by BLNR as described in Response #3, directing A&B to prepare the EIS. However, as is evident by the text of the EIS, information from Mahi Pono, particularly related to Mahi Pono's farm plan, has been solicited and is fully considered in the EIS. However, it is also important to recognize that the Central Maui agricultural fields are privately owned and farming is a permitted activity on those lands, and therefore farming on those lands is not a trigger for the preparation of an EIS. As for being a "party" to the Water Lease, the EIS analyzes proposed uses of the water, but is not necessarily tied to a specific applicant (although the EIS explains how A&B, on May 14, 2001, requested that the State offer at public auction a long-term water lease under HRS § 171-58). Presumably, any party who intends to use the water in a manner consistent with the EIS analysis could bid on the lease at public auction.

Comment 58: *The Draft EIS states: "The Water Lease is to be awarded by public auction."*

- *The process for public auction and awarding of the lease should be defined.*

Response 58: HRS § 171-58(c) provides in relevant part that "disposition of water rights may be made by lease at public auction as provided in [HRS Chapter 171]." That section of the law also provides that "any disposition by lease shall be subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session next following the date of disposition."

HRS § 171-16(a) describes the public auction process as follows:

(a) Auctions. Public notice of any proposed disposition by auction shall be given at least once statewide and once in the county where the land being disposed of is located. Notice of the auction shall contain the following:

- (1) Time and place of the auction;
- (2) General description of the land, including the address and tax map key;
- (3) Specific use for which the disposition is intended; and
- (4) Upset price or rental to be charged. The maps showing the metes and bounds description and the classification of the land shall be kept in the office of the board of land and natural

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resources and of its land agent in the county in which the land is situated, and shall be open for inspection at all reasonable hours.

Further specifics on the public auction process have not been made publicly available at this time. We expect that the DLNR/BLNR will provide more details on the process once the EIS is finalized and the Water Lease process can proceed.

Comment 59: *The Draft EIS states: “The content and parameters of a watershed management plan related to the proposed Water Lease are unresolved at this time but will be resolved before BLNR can issue the Water Lease.”*

- *The “content and the parameters of the watershed management plan” that has yet to be “resolved” should be outlined and defined.*
- *The specific timing for resolving the parameters of the watershed management plan should be noted as well. Resolution before BLNR is too vague and too close to awarding of lease.*

Response 59: Please note that on October 11, 2019, the BLNR approved the minimum content requirements for a watershed management plan which are discussed in Response #23 above, and provided in Section 2.1. of the Final EIS as shown on pages 2-2 to 2-4. With respect to the timing, as presented in Section 8 of the EIS, the specific contents and parameters of the watershed management plan in connection with the proposed Water Lease will be resolved before the BLNR can issue the Water Lease.

Comment 60: *The Draft EIS states: “The Water Lease is also subject to the rights of the DHHL to reserve water sufficient to support current and future homestead needs.”*

- *The amount set aside for the DHHL reserve that should be approximated in a specific water demand cannot be provided at this time.*

Response 60: Specific information regarding the DHHL's future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS, and updated in the Final EIS, as discussed in Response #13 and # 22 above, and shown on pages 2-4 to 2-7. The assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui) as shown on pages 2-4 to 2-7.

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Comment 61: *The use of reclaimed and recycled wastewater was dismissed because of construction of transmission pipelines and potential impacts to native Hawaiian birds. This matter should be explored further using other transmission possibilities, such as tankers.*

Response 61: As discussed in Response #31 above, the Final EIS has been revised to incorporate a discussion of anticipated plans to retrofit the County's Kahului WWRF plant to provide R-1 treatment capabilities in the future (as a project targeted for implementation as early as 2026-2028) but this upgrade currently has not been funded. It is noted that upgrading this facility to R-1 treatment standards is contingent upon the availability of County funding. This discussion is shown on pages 3-9 to 3-11 of the Final EIS. In summary, the yield of the subject WWRF would be nominal (approximately 5.5 mgd) and it would also require the installation of a transmission / transportation system to convey these recycled waters from the Kahului WWRF to the Central Maui agricultural fields, a distance of some 10+ miles as there is no current transmission system that is capable of conveying recycled waters to the Central Maui agricultural fields. In addition, construction near Kanahā Pond, which is designated as a State wildlife sanctuary and any development along that corridor that surrounds the pond would raise the risks of new environmental impacts in an acknowledged sensitive area, and be subject to additional regulatory processes and controls such as compliance with Section 7 with the USFWS, Chapter 6E, DOH approval process for construction and treatment, and recycled water use permits.

Even if this modest amount of water could feasibly be transported to Central Maui, it should be noted that a challenge associated with the production of recycled waters includes the wide variety of chemicals and compounds as well as microorganisms, organic chemicals, inorganic chemicals, disinfectants, disinfectant byproducts that need to be considered when treating reused water. Each of these products has the potential to be harmful to both humans and the environment. The extent of environmental impacts from these byproducts is dependent on the concentration as well as the type of specific compound/chemical in use. If not treated properly and used in the Central Maui agricultural fields, the chemicals and compounds used for the R-1 water could reduce crop yields for consumption and the underlying soils in Central Maui.

Comment 62: *Councilmember Tamara Paltin:*

The lease was issued so long ago, and with no treaty of annexation, was it ever valid in the first place, and should we even be considering renewing it knowing what we know now?

Response 62: Providing a legal analysis of contracts and agreements enabling an applicant to pursue a proposed action is beyond the scope of an EIS. Please refer to Response #1 above regarding the scope of the EIS. However, please note that the pending request is for a new, long-term (30 year), water lease to be issued at public auction no Water Lease has been issued, and no

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Water Lease will be issued until after an EIS is accepted. Your comment about "renewing" is unclear as no renewals are proposed.

Comment 63: *To ask for a 30-year lease of a public trust without any reference to timeframes, deliverables, or performance requirements does not seem appropriate.*

Response 63: Please note that the phasing and timing of the Proposed Action is included in Section 2.1.5 of the EIS. Specifically, Section 2.1.5 of the Draft EIS states:

After the Final EIS (FEIS) is published and accepted by the BLNR, the State of Hawai'i will conduct appraisals of the water from the License Area, produce lease agreements and a Watershed Management Plan (refer to Section 2.1). Once this is complete the Water Lease will be put to public auction. Once the Water Lease is issued by the BLNR, under the Proposed Action, Mahi Pono can implement its proposed farm plan.

An estimated 10 years will be required for Mahi Pono and lessees to remove volunteer sugarcane and weeds from the approximate 30,000 acres, amend soils, install field improvements, build warehouses and other structures, and plant crops. The predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years (Plasch, 2019).

In order for Mahi Pono and other farmers to justify the very substantial investment in a 30,000-acre farm, a long-term water lease will be required. A short-term lease would derail development of the Mahi Pono farm plan because of the risk of not being able to farm for a long enough period to recover their planned investment (Plasch, 2019).

However, please further note that the terms and conditions of the Water Lease are at the discretion of the BLNR. Should the BLNR make performance indicators a part of the Water Lease, the lessee will comply with those terms and conditions.

Regarding water being a public trust, we acknowledge that the Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. A specific

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discussion regarding the Public Trust Doctrine has been added to the Final EIS as Section 1.5 as shown on pages 1-25 to 1-27.

Comment 64: *Why hasn't the applicant engaged with the County? There have been several invitations to public meetings, letters, and requests for information from the applicant that have been ignored.*

Response 64: The EIS process has included substantial engagement. Chapter 9 of the EIS contains all consultation efforts during this EIS process. Specifically, all the County of Maui agencies were consulted with during the EIS Preparation Notice (EISPN) and the Draft EIS stages. It is further noted that there were also several opportunities for members of the public to participate in public scoping meetings conducted as part of the EIS effort. Moreover, numerous of the agencies provided comments to both documents as shown in Appendix M of the EIS, which includes all comments and responses related to the EISPN, and Appendix N of the Final EIS which includes all comments and responses related to the Draft EIS.

Regarding meetings with the Maui County Council, representatives of A&B, after the close of its sugar operations and prior to the sale of its agricultural fields to Mahi Pono, appeared before the Council to discuss its diversified agricultural plans for its former sugar lands. Representatives of Mahi Pono have individually met with several members of the Maui County Council, but Mahi Pono has not been formally invited to provide testimony at a formal meeting of the County Council or any of its committees.

Mahi Pono has also had various meetings with community groups such as Go Maui, Maui Tomorrow, Mā'alaea Community Association, Pukalani Community Association, and the Alliance of Maui Community Associations regarding the Mahi Pono farm plan and use of water from East Maui streams, and conducted farm tours with members of the community. Mahi Pono is also working directly with MDWS as well as the County Corporation Counsel and Mayor's offices, to help coordinate continued deliveries of surface water to the County's Kamole-Weir WTP and the KAP.

Comment 65: *An alternative that has not been explored is the potential to utilize R-1 water from the Wailuku-Kahului Wastewater Reclamation Facility to satisfy irrigation needs now or in the future.*

Response 65: The use of recycled water from the Kahului WWRF was discussed in the Draft EIS Section 3.1.1.2. As explained in Response #31 above, that section of the EIS has been updated to reflect the County's plans to upgrade the Kahului WWRF to an R-1 treatment facility which can be used for food crops. However, it is anticipated that this upgrade would not occur

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until 2026-2028. Moreover, this WWRP would produce only about 5.5 mgd. In other words, this potential supplemental resource would supply a limited amount of water in a manner that generally would not enhance the environmental quality, or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, or risks that are associated with the Proposed Action. Please see a further discussion on this topic in Response #61 above and on pages 3-9 to 3-11 of the Final EIS.

Comment 66: Other Discussion:

Please provide stream-gauge measurements of stream flows upstream and downstream of each diversion for each stream contained within the area of the Draft EIS.

Response 66: Please see Response # above. It is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. As noted in the CWRM D&O FOF 50, EMI takes measurements at the boundary of each section of the License Area and at its gauging stations at Maliko Gulch. However, for the purpose of measuring the aggregate flow from entire License Area, the measurements taken at the Honopou boundary were used.

Comment 67: *The DEIS refers to "Base Conditions" as those that occurred during full diversion during sugar cane cultivation.*

Response 67: Your comment is unclear as there is no reference in the Draft EIS to "Base Conditions" being the diversions that took place during the cultivation of sugarcane. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP

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expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table in Section 3.5 as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 68: *Annually ~26% of the Upcountry water supply is being provided by the water contained in this diversion (Kamole and the East Maui Lease areas).*

Response 68: We are unclear on the source of your 26% figure. However, please note that all of the surface water supplied to MDWS's Upcountry Maui Water System, which is 80-90% of the total water used in the Upcountry Maui Water System (see EIS Section 2.1.3.1), is tied to EMI's ability to divert water from the License Area. MDWS' right to access this source on a long-term

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basis is contingent upon the issuance of the Water Lease. As discussed in Section 3.3 of the Draft EIS:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS. At this point in time, it is unknown whether sufficient groundwater resources exist in Upcountry Maui to meet these water demands. It is anticipated that the development of alternative water-source infrastructure would be prohibitively expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment.

However, please note that the discussion in the Draft EIS regarding the Upper and Lower Kula Systems has been supplemented with the additional figure as shown on page 2-15 [FEIS FIGURE 2-4] which has been added to Section 2.1.3.1 of the Final EIS to accurately show which system is serving which community in Upcountry Maui.

Moreover, the water delivered to the MDWS through Wailoa Ditch is an important back-up source for the Lower Kula and Upper Kula Systems during dry periods as the Wailoa Ditch is the more reliable of the three Upcountry surface water sources. Water is pumped uphill from the Kamole-Weir WTP to the Upper and Lower Kula systems during dry periods. Therefore, these systems also depend on the EMI Aqueduct System in crucial, drought times. Please note that Section 2.1.3.1 of the Final EIS has been supplemented to include this information as shown on pages 2-17 to 2-20.

Comment 69: *There are development tunnels that are counted as groundwater, not surface water.*

Response 69: It is unknown what specific development tunnels you are referring to, but it is our understanding that the CWRM looks at tunnel water on a case-by-case basis with respect to categorizing it as ground water or surface water. Generally, it is considered as ground water but the situation gets more complicated once the water flows into streams and mixes with surface water. Factored into the CWRM categorization decision is how the tunnel water is conveyed and when it daylights from the tunnel.

Comment 70: *Climate-appropriate crops are not put forth as an alternative.*

Response 70: It is unclear what is meant by climate-appropriate crops, however, please note that all the crops in the Mahi Pono farm plan are well suited for the climate in Central Maui.

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Moreover, as discussed in Response #8 above, the Mahi Pono farm plan is a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e. orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, soil conditions, seasonality and the need to be sensitive to the existing local farming community.

Comment 71: *What is the exact area that is going to be served by the water in this diversion (including parcels and CPRs)?*

Response 71: It is unclear what is meant by “this diversion.” However, Chapter 2 of the EIS presents the areas to be serviced by or in connection with the diverted surface water.

Comment 72: *Is the diverted water going to be supplied to A&B-owned properties and CPRs in the Central Valley?*

Response 72: As discussed in Section 2.1 of the Final EIS, the Water Lease will enable the EMI Aqueduct System to continue to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion. The Proposed Action will also ensure the continued delivery of water for the Nāhiku community which, through the MDWS, draws water sourced directly from EMI’s West Makapipi Tunnel 2 (Well No. 4806-07), a development tunnel located on EMI land directly adjacent to the Koolau Ditch. It will also allow the continued provision of water to approximately 30,000 acres of agricultural lands (formerly in sugarcane) in Central Maui. Limited water (no more than 1.1 mgd) is presently being made available on an interim basis to pre-existing additional agricultural uses, as well as community, commercial, and industrial uses outside of Mahi Pono's Central Maui agricultural fields. None of the water diverted under the Water Lease would be used for any of the remaining A&B properties that were not sold to Mahi Pono, unless properties receive water through the MDWS, like any other MDWS customer.

Comment 73: *The DEIS makes reference to a “watershed plan.” Will this plan be drafted by the applicant, or does the applicant plan to utilize the existing watershed plan that is used by the East Maui Watershed Partnership?*

Response 73: Please note as discussed in Response #23 above, the lessee is subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. Furthermore, as discussed in Response #24 above, under the Proposed Action, it is anticipated that EMI and/or Mahi Pono will continue to pursue watershed management activities. This has been added to Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4. This could be a

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continuation of the EMWP Management Plan, or developing a new watershed management plan, or a combination of both. Please also refer to Response #74 below.

Comment 74: *If the applicant plans to utilize the watershed plan currently used by the East Maui Watershed Partnership, how will downstream issues below the jurisdiction of the EMWP be adequately addressed?*

Response 74: With respect to the proposed Water Lease, the law (HRS § 171-58) requires that the Water Lease lessee agree to work with the DLNR to develop and implement a watershed management plan. That watershed management plan would need to meet the content requirements approved by the BLNR as described in Response #23 above and pages 2-2 to 2-4 of the Final EIS, and see also EIS Appendix O-1. The BLNR-approved content requirements for a watershed management plan note that DLNR "will work with each individual lessee to determine the specific management actions, based on the site-specific needs, that will result in the prevention and degradation of surface water and ground water quantity and quality within the water lease area. Those actions, described within the plan, will be informed by existing watershed management plans (should they exist)." Under the Proposed Action, it is anticipated that EMI and/or Mahi Pono will continue to pursue watershed management activities, through a watershed management plan prepared in compliance with HRS § 171-58. Thus, the EMWP watershed plan will not be the applicable plan under the proposed Water Lease

Comment 75: Shay Chan Hodges, Board of Water Supply:

Please see following written testimony, dated October 4, 2019. [Enclosing an email dated October 4, 2019 from Shay Chan Hodges to EACP Committee re Temporary Investigative Group - Research.pdf]

Response 75: Please note that we have received the Board of Water Supply's Temporary Investigate Group Research Notes dated October 4, 2019, through a Draft EIS comment letter submitted directly by Shay Chan Hodges. Our response to that letter is contained within Appendix N of the Final EIS.

Moreover, as discussed in Response #28 above, the TIG Report was made public on October 16, 2019, after the publication of the Draft EIS, and a copy of the TIG Report has been provided as Appendix Q of the EIS. A discussion of the TIG report has been added to Section 3.1.2 of the Final EIS, as shown on pages 3-19 to 3-20.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for

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review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Attachment #1

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

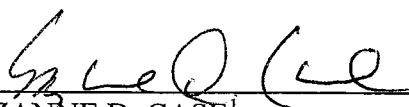
In the Matter of Contested Case Regarding) DLNR File No.: 01-05-MA
Water Licenses at Honomanu, Keanae,)
Nahiku, and Huelo, Maui)
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**ORDER RE ALEXANDER & BALDWIN, INC.'S AND EAST MAUI
IRRIGATION COMPANY, LIMITED'S SUBMISSION OF ENVIRONMENTAL
IMPACT STATEMENT SCOPE OF WORK FILED JUNE 9, 2016**

On June 9, 2016, Alexander & Baldwin, Inc. (A&B) and East Maui Irrigation Company, Limited (EMI) filed a Submission of Environmental Impact Statement Scope of Work (Scope of Work) in response to the Order for A&B to Commence the Environmental Review Process and Deferring Decision on Petitioners' Motion to Establish Scope of Reconvened Contested Case Proceedings filed on April 14, 2016 (Board's Order). Petitioner, Nā Moku Aupuni O Ko'olau Hui, filed a Response to A&B and EMI's Scope of Work on June 17, 2016.

The Board of Land and Natural Resources (Board) notes that the Scope of Work sets forth the information requested in the Board's Order. A&B and EMI should proceed with the preparation of an environmental impact statement (EIS) in as expeditious manner as possible. A&B and EMI should copy the Board on any notices that are sent out in connection with the EIS.

SO ORDERED this 8th day of July, 2016.



SUZANNE D. CASE¹
Presiding Officer
Board of Land and Natural Resources

¹ The Board members have delegated authority to Suzanne Case to sign this Order on behalf of the Board.

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAI'I

In the Matter of Contested Case Regarding) DLNR File No.: 01-05-MA
Water Licenses at Honomanu, Keanae,)
Nahiku, and Huelo, Maui)
)
)
)
)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following document:

1. ORDER RE ALEXANDER & BALDWIN, LIMITED'S SUBMISSION OF ENVIRONMENTAL IMPACT STATEMENT SCOPE OF WORK FILED JUNE 9, 2016

was duly served upon the following parties as indicated, by means of State Messenger or U.S. Mail, postage prepaid on July 11, 2016, addressed as follows:

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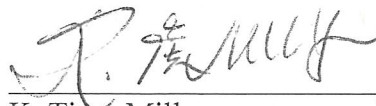
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Dated: Honolulu, Hawai'i, July 11, 2016



K. Tiger Mills
Department of Land & Natural Resources
State of Hawai'i

**Scope of Services for
Preparation of a Chapter 343,
Hawai‘i Revised Statutes
Environmental Impact
Statement
for**

**PROPOSED LEASE FOR THE
NĀHIKU, KE‘ANAE, HONOMANŪ,
AND HUELO LICENSE AREAS**

Prepared for:

**Alexander & Baldwin, Inc. and
East Maui Irrigation Company, Ltd.**

June 2016

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MUNEKIYO HIRAGA

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APPENDIX

Appendix A. Order for A&B to Commence the Environmental Review Process and Deferring Decision on Petitioners’ Motion to Establish Scope of Reconvened Contested Case Proceedings

I. INTRODUCTION

I. INTRODUCTION

A. BACKGROUND

In May 2001, Alexander & Baldwin, Inc. and East Maui Irrigation Company, Ltd. (EMI) (also collectively referred to as A&B) filed an Application for the Sale of Lease at Public Auction (“A&B Lease Application”) with the Board of Land and Natural Resources (BLNR) seeking a long-term 30-year lease for the “*right, privilege, and authority to enter and go upon*” the Nāhiku, Ke‘anae, Honomanū, and Huelo license areas “*for the purpose of developing, diverting, transporting, and using government-owned waters*”. Compliance with the requirements of Chapter 343, Hawaii Revised Statutes (HRS) is necessary prior to the BLNR’s consideration of the long-term lease request. By order dated April 14, 2016, the BLNR directed A&B, to provide to the Board, a scope of work for the preparation and processing of an environmental review document pursuant to Chapter 343, HRS. See **Appendix “A”**. In preparing the scope of work, A&B has assumed that an Environmental Impact Statement (EIS) process instead of an Environmental Assessment process would be the appropriate means of addressing the requirements of Chapter 343, HRS, for the proposed lease request. The trigger for compliance with Chapter 343, HRS environmental review is the use of state lands. It is assumed that the BLNR will be the Accepting Authority for the EIS.

It is noted that the BLNR’s order required specific content requirements to be incorporated in the scope of work, as follows:

1. The scope of work should distinguish those portions of the EIS that can be undertaken prior to the Commission on Water Resource Management’s (CWRM) decision on the petition to amend the Interim Instream Flow Standards (IIFS) from those that require a decision from the CWRM prior to completion.
2. The scope of work should demonstrate compliance with requirements contained in Hawai‘i Administrative Rules, Section 11-200-17.
3. The scope of work should include a tentative schedule for commencement and completion of various portions of the scope of work.

With respect to the EIS schedule noted in Item No. 3, above, the order states that to the degree that A&B’s decision to transition away from sugar cane cultivation affects the ability of, or timing for A&B to complete portions of the environmental review document, that should be noted in the scope of work.

This report sets forth the scope of work for the preparation and processing of an EIS, as required by the BLNR.

B. HISTORY OF WATER LEASES

The A&B Lease Application seeks to continue the operation by A&B subsidiary, EMI, of the East Maui aqueduct system which is an integrated system of diversions, ditches, intakes, and tunnels that collects water from streams located on the rainy windward slopes of East Maui and transports it to A&B's sugar cane fields in Central Maui, as well as to the Maui County Department of Water Supply for the domestic water needs of Upcountry Maui and the irrigation needs of small farms throughout Upcountry as well as in the Kula Ag Park. The watersheds from which it collects water total approximately 50,000 acres, of which EMI owns approximately 17,000 acres. Approximately 33,000 acres in the Huelo, Honomanū, Ke'anae, and Nāhiku watersheds are owned by the State of Hawai'i and have historically been leased to EMI for the purposes of developing, diverting, transporting and using the government-owned waters.

The aqueduct system was constructed in phases beginning in 1876 in accordance with agreements between EMI's predecessor entities and the Kingdom of Hawai'i and later the Territory of Hawai'i. Major milestone completion dates of the current system include the original 17-mile ditch in 1878, Koolau Ditch in 1904, the Haiku Ditch in 1914, the Kauhikoa Ditch in 1915, and the Wailoa Ditch in 1923. Since 1938, the relationship between the government of Hawai'i and EMI with regard to the coordinated operation of the Ditch System on government and EMI owned lands has been based on an agreement (the "1938 Agreement") dated March 18, 1938 between the Territory of Hawai'i and EMI. The 1938 Agreement provided a framework for a transition from a patchwork of previously issued water leases with differing lease and rental terms, to the subsequent issuance by the Territory, following public auction, of long-term water lease for each of the four (4) watersheds that comprise the current license areas.

The four (4) license areas and their respective most recent long-term lease terms are listed in **Table 1**. After the expiration of the terms of the long-term lease, revocable permits were issued. The revocable permits are issued by the BLNR and administered by the Department of Land and Natural Resources' (DLNR) Land Division.

Table 1. License Areas and Final Lease Before Conversion to Revocable Permits

License Area	General Lease Number	Term
Nāhiku	GL 3505	1955-1976
Ke‘anae	GL 3349	1950-1971
Honomanū	GL 3695	1962-1986
Huelo	GL 3578	1960-1981

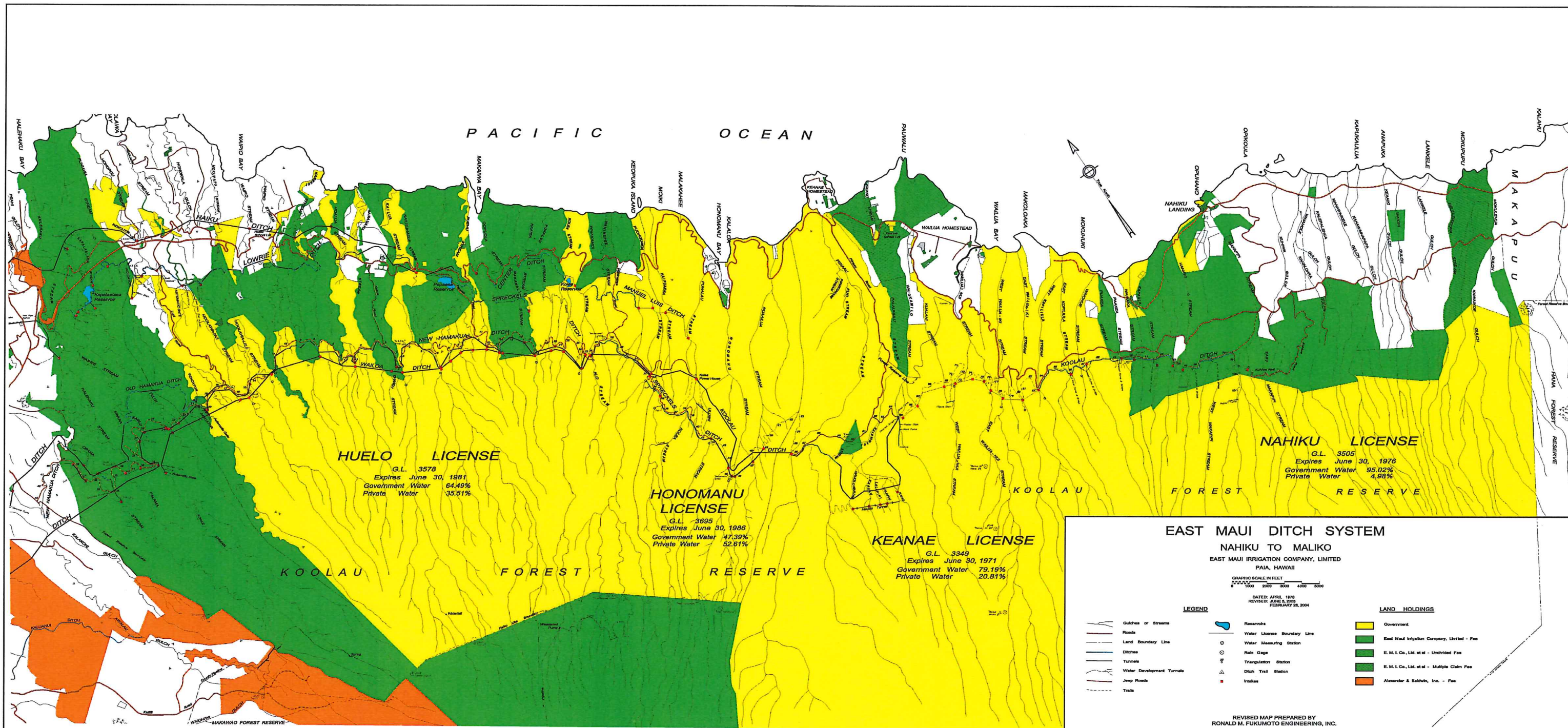
The location of the four (4) license areas are illustrated in **Figure 1** and described in **Table 2** below.

Table 2. License Areas

License Area	Tax Map Key	Area	Revocable Permit No.
Nāhiku	(2)1-2-04:05, 07	10,111.220 acres, more or less	S-7266
Ke‘anae	(2)1-1-02:02 (por.)	10,768.000 acres, more or less	S-7265
Honomanū	(2)1-1-001:44	3,381.000 acres, more or less	S-7263
Huelo	(2)1-1-001:05 (2)2-9-014: 01, 05, 11, 12, 17	8,752.690 acres, more or less	S-7264

As noted previously, the A&B Lease Application was filed with the BLNR in May 2001, seeking a long-term, 30-year lease rather than continuing with year-to-year revocable permits. Shortly thereafter, Na Moku Aupuni O Koolau Hui, Inc. (“Na Moku”) and Maui Tomorrow requested a contested case hearing, with Native Hawaiian Legal Corporation (NHLC) filing on behalf of petitioners Na Moku, Elizabeth Lapenia, Beatrice Kekahuna, and Marjorie Wallett. (In May 2007, Elizabeth Lapenia withdrew from the case and is no longer represented in it.) Concurrently, the Petitioners filed with the Commission on Water Resources Management (CWRM) a Petition to Amend the Interim Instream Flow Standard (IIFS) for 27 Streams in East Maui.

CWRM has not issued a final decision on the IIFS for the 27 streams, which is the subject of a contested case proceeding. The BLNR has not reconvened the contested case hearing for the A&B Lease Application pending the outcome of the IIFS proceedings.



Source: East Maui Irrigation Company, Ltd.

Figure 1 Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas
Map of License Areas

NOT TO SCALE



Prepared for: Alexander & Baldwin, Inc. and
East Maui Irrigation Company, Ltd.

C. STREAMS WITHIN LICENSE AREAS

There are 40 streams within the four (4) license areas. Of these 40 streams, A&B currently diverts water from 36 of these streams, but is in the process of permanently abandoning all of its diversions on and restoring water to five (5) of these 36 streams. In light of this restoration action, A&B requests to continue to divert water from 31 streams. See **Table 3**. The EIS shall assess the impacts of the “*right, privilege, and authority to enter and go upon*” the license areas “*for the purpose of developing, diverting, transporting, and using government-owned waters*” for the 31 streams.

Table 3. License Area Streams

License Area	No.	Stream Name	Subject to Petition to Amend IIFS?	Notes on Diversion
Nahiku License Revocable Permit No. S-7266	1	Makapipi	Yes	
	2	Hanawi	Yes	
	3	Kapaula	Yes	
Keanae License Revocable Permit No. S-7265	4	Waiaaka	Yes	
	5	Paakea	Yes	
	6	Puakea	No	
	7	Waiohue	Yes	
	8	Puakaa	Yes	
	9	Kopiliula	Yes	
	10	East Wailua-iki	Yes	
	11	West Wailua-iki	Yes	
	12	East and West Wailuanui	Yes	Planned for full and permanent restoration
	13	Waikani*	Yes	Not diverted
	14	Kualani	Yes	Not diverted (stream is tributary of Waiokamilo)
	15	Waiokamilo	Yes	Fully restored in 2007
	16	Palauhulu	Yes	Planned for full and permanent restoration
	17	Waianu/Ohia	Yes	Not diverted
Honomanū License - Revocable Permit No. S-7263	18	Piinaau	Yes	Planned for full and permanent restoration
	19	Nuaailua	Yes	
	20	Honomanū	Yes	
	21	Kolea/Punalau	Yes	
	22	Haipuaena	Yes	
Huelo License	23	Puohokamoa	Yes	

License Area	No.	Stream Name	Subject to Petition to Amend IIFS?	Notes on Diversion
Revocable Permit No. S-7264	24	Wahinepee	Yes	
	25	Alo	Yes	
	26	Waikamoi	Yes	
	27	Kolea	No	
	28	Punaluu	No	
	29	Kaaiea	No	
	30	Oopuola	No	
	31	Puehu	No	
	32	Nailiilihaele	No	
	33	Kailua/Ohanui	No	
	34	Hanauana	No	
	35	Hoalua	No	
	36	Puolua/Hanehoi	Yes	Planned for full and permanent restoration
	37	Waipio	No	
	38	Mokupapa	No	
	39	Hoolawa-Liili/Hoolawa-Nui	No	
40	Honopou	Yes	Planned for full and permanent restoration	
* Waikani is listed on this table because a Petition to amend the IIFS for Waikani has been filed. Waikani, however, is a waterfall on the Wailuanui Stream.				

D. FORMAT FOR DOCUMENTING THE EIS SCOPE OF WORK

The EIS scope of work described in this report reflects the process-oriented nature of Chapter 343, HRS environmental review documents. Therefore, while the scope of work presented herein seeks to be as comprehensive as possible in terms of defining actions to be managed and implemented by the EIS preparer, input received from agencies, organizations, and the public during various phases of document preparation and review may be recognized and incorporated into the EIS by the EIS preparer and Accepting Authority.

The EIS scope of work presented in this report addresses topic areas consistent with the BLNR's order and is organized by section headings, as summarized in **Table 4**.

Table 4. Summary of Report Organization

Report Chapter	Subject Matter
Chapter II	Scope of Work for the EIS Preparation Notice (EISPN) and Attendant Consultation/Scoping Process
Chapter III	Scope of Work for the Preparation of the Draft EIS
Chapter IV	Scope of Work for the Preparation of the Final EIS
Chapter V	Preliminary Time Schedule for the EIS Process

**II. SCOPE OF WORK FOR THE
ENVIRONMENTAL IMPACT
STATEMENT PREPARATION
NOTICE (EISPN) AND
ATTENDANT
CONSULTATION/SCOPING
PROCESS**

II. SCOPE OF WORK FOR THE ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE (EISPN) AND ATTENDANT CONSULATION/SCOPING PROCESS

A. ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE DEFINING THE PROPOSED ACTION

The preparation of the Draft and Final EIS documents is guided by the provisions of Hawaii Administrative Rules (HAR), Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules. The initial document preparation phase of the EIS process is the preparation of the EIS Preparation Notice (EISPN). The EISPN addresses the content requirements of an Environmental Assessment and serves as a mechanism for soliciting early input from agencies, citizen groups and individuals. In this instance, comments received on the EISPN would serve to identify key issues which would be addressed in the Draft EIS and Final EIS.

The EISPN will identify the proposed action to be assessed during the EIS process. In this case, the proposed action is a long-term 30-year lease for the *“right, privilege, and authority to enter and go upon”* the license areas *“for the purpose of developing, diverting, transporting, and using government-owned waters”* from the 31 streams in the Nāhiku, Ke‘anae, Honomanū, and Huelo license areas. The lease will not allow more water to be diverted than allowed by the IIFS decisions, currently pending before the CWRM, and as may be further modified in the future.

As noted previously, the petition to amend the IIFS for 27 streams is pending with the CWRM. Pursuant to a court ruling made in response to the appeal of a 2003 BLNR decision in the contested case hearing for the A&B Lease Application, the BLNR may wait for the CWRM to act on the IIFS petitions and rely on CWRM’s determination as to the minimum instream flows necessary to protect traditional and customary practices of native Hawaiians, rather than conducting its own independent investigation of these issues as part of the lease process. Any disposition of water by the BLNR in connection with the lease application would be subject to the amended IIFS established by CWRM. Accordingly, the environmental review process under Chapter 343, HRS cannot be properly completed until the CWRM issues a final decision on the petitions to amend the IIFS.

The timing of a final decision from the CWRM on the petitions to amend the IIFS is unknown. A preliminary time schedule for the EIS process as it relates to CWRM's decision on the petitions to amend the IIFS is discussed in Chapter V. As noted in Chapter V, there are some portions of the EIS process that may be undertaken prior to the CWRM decision on the amended IIFS while other tasks will require a decision from CWRM prior to EIS completion.

In the event the EISPN is published prior to the CWRM decision on the amended IIFS, the proposed action described in the EISPN shall state that the amount of water to be diverted will be dependent on the pending petitions to amend the IIFS and that the Draft EIS and supporting technical studies will assess the impacts of the water lease, taking into account the water availability set forth by the CWRM decision on amending the IIFS for the 27 streams. The EISPN should identify the parameters, such as the CWRM decision, that will define the proposed action that will be assessed in the Draft EIS.

B. IDENTIFICATION OF ISSUES TO BE ADDRESSED IN THE ENVIRONMENTAL IMPACT STATEMENT

Issues identification may not be limited to the EISPN review process, but may also include a public scoping process which may consist of meetings with interested and affected stakeholders. Issues identification may also be defined through review of testimony and filings with the CWRM. Other means of soliciting input for purposes of identifying issues to be addressed in the EIS document include review of testimony and documents associated with related water use matters affecting East Maui Streams. Irrespective of the method of identifying issues and concerns, the EIS preparer shall utilize best efforts to thoroughly identify issues which should be addressed in the EIS document.

It is noted that issues identification is a work element which is not limited to a specific phase of the EIS process (i.e., issues identification extends beyond the EISPN phase of work). For example, as technical studies are prepared and their respective findings are disclosed in the Draft EIS, comments on the studies may lead to new questions and comments which should be addressed in the Final EIS.

With respect to this EIS Scope of Work, an initial list of issue topics which are deemed appropriate for consideration in the EIS are summarized in **Table 5**. The issue categories and topics listed in **Table 5** follow, in part, the analytical framework for defining instream flow standards. It is expected that this list will be expanded once the EISPN and Draft EIS processes are initiated.

Table 5. Preliminary List of Issues to be Addressed in the EIS

Issue Category	Topics to be Addressed in EIS
Existing Conditions	<ul style="list-style-type: none"> • Existing and Surrounding Land Use • Topography and Soil Characteristics • Climate • Hazardous Materials/Substances
Hydrogeology	<ul style="list-style-type: none"> • Groundwater Interaction • Surface-Water Flows
Fish/Wildlife Habitat	<ul style="list-style-type: none"> • Native Vertebrates • Invertebrates • Invasive Species • Abundance • Diversity • Distribution • Species Sustainability
Ecosystem Maintenance	<ul style="list-style-type: none"> • Estuaries • Wetlands • Riparian areas • Nearshore Waters
Water Quality	<ul style="list-style-type: none"> • Water Quality Standards • Total Maximum Daily Load
Natural Hazards	<ul style="list-style-type: none"> • Flooding • Tsunami Exposure
Historic Resources	<ul style="list-style-type: none"> • Archaeology • Cultural Resources
Hawaiian Rights	<ul style="list-style-type: none"> • Traditional and Customary Rights and Practices • Taro Cultivation • Appurtenant Rights
Non-Instream or End Uses of Diverted Water	<ul style="list-style-type: none"> • Water Delivery Systems • Domestic/Municipal Use • Agricultural Uses • Agricultural Productivity • Present vs. Future Uses • Economic Impacts
Aesthetics	<ul style="list-style-type: none"> • Scenic Views
Recreation	<ul style="list-style-type: none"> • Swimming • Nature Study • Fishing • Hiking
Public Services	<ul style="list-style-type: none"> • Police • Fire • Medical Services
Economy	<ul style="list-style-type: none"> • Employment and Personal Income • Fiscal Impacts
Infrastructure	<ul style="list-style-type: none"> • Roadways • Wastewater Systems (Private and Municipal) • Water Systems (Private and Municipal)

Issue Category	Topics to be Addressed in EIS
	<ul style="list-style-type: none"> • Drainage System • Diversion Infrastructure • Other Utilities (Electrical, Communication)

C. PREPARATION OF THE EISPN DOCUMENT

The EIS preparer shall develop the EISPN in accordance with HAR, Title 11, Chapter 200, Sections 11-200-10 and 11-200-15. In this regard, the EISPN shall meet the requirements for content compliance, as summarized in **Table 6**.

Table 6. Summary of Content Requirements of the EISPN

HAR, Title II, Section 200 Reference	Content Requirement
11-200-10 (1)	Identification of applicant or proposing agency
11-200-10 (2)	Identification of approving agency, if applicable
11-200-10 (3)	Identification of agencies, citizen groups, and individuals consulted in making the assessment
11-200-10 (4)	General description of the action's technical, economic, social, and environmental characteristics
11-200-10 (5)	Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps
11-200-10 (6)	Identification and summary of impacts and alternatives considered
11-200-10 (7)	Proposed mitigation measures
11-200-10 (8)	Agency determination or, for draft environmental assessments only, an anticipated determination
11-200-10 (9)	Findings and reasons supporting the agency determination or anticipated determination
11-200-10 (10)	Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared
11-200-10 (11)	List of all permits and approvals (State, federal, county) required

Inasmuch as the EISPN serves as notice that an EIS will be prepared and will be used as a scoping document, the content requirements set forth in **Table 6** will not be fully addressed. The EISPN document shall indicate, preliminarily, studies to be completed and issues to be analyzed in further detail in the Draft EIS.

D. CONSULTED PARTIES

The EIS preparer shall identify agencies, stakeholders, and community groups that will be consulted during the preparation of the EIS. The Office of Environmental Quality Control provides guidance on agencies and organizations that should receive copies of the Draft EIS and Final EIS. It is noted that A&B will be consulting with the Department

of Hawaiian Home Lands (DHHL) early in the process with respect to water reservations pursuant to Section 171-58(g), HRS, which states:

The department of land and natural resources shall notify the department of Hawaiian home lands of its intent to execute any new lease, or to renew any existing lease of water rights. After consultation with affected beneficiaries, these departments shall jointly develop a reservation of water rights sufficient to support current and future homestead needs. Any lease of water rights or renewal shall be subject to the rights of the department of Hawaiian home lands as provided by section 221 of the Hawaiian Homes Commission Act.

**III. SCOPE OF WORK FOR
THE PREPARATION OF THE
DRAFT ENVIRONMENTAL
IMPACT STATEMENT**

III. SCOPE OF WORK FOR THE PREPARATION OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

A. DRAFT ENVIRONMENTAL IMPACT STATEMENT (EIS) CONTENT REQUIREMENTS

The EIS preparer shall prepare the Draft EIS in accordance with requirements set forth in Hawaii Administrative Rules (HAR), Title 11, Chapter 200, Section 11-200-16 and Section 11-200-17. Importantly, the Draft EIS “*shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action.*”

Content requirements of the Draft EIS document are summarized in **Table 7**.

Table 7. Summary of Content Requirements of the Draft EIS

HAR, Title 11, Section 200 Reference	Content Requirement Summary
11-200-17(b)	Draft EIS Summary Sheet
11-200-17(c)	Table of Contents
11-200-17(d)	Statement of Purpose and Need
11-200-17(e)	Project Description
11-200-17(f)	Alternatives to the Proposed Action
11-200-17(g)	Description of the Environmental Setting
11-200-17(h)	Relationship of the Proposed Action to Land Use Plans, Policies and Controls
11-200-17(i)	Discussion of Probable Impacts
11-200-17(j)	Relationship between Local Short-Term Uses of the Environment and Maintenance/Enhancement of Long-Term Productivity
11-200-17(k)	Description of Irreversible and Irrecoverable Commitments of Resources
11-200-17(l)	Discussion of Probable Adverse Environmental Effects
11-200-17(m)	Discussion of Mitigation Measures to Address Adverse Impacts
11-200-17(n)	Summary of Unresolved Issues
11-200-17(o)	Listing of Governmental Agencies, Organizations and Individuals Consulted in Preparing the Draft EIS
11-200-17(p)	Comments Received and Responses Made During the Consultation Process

With respect to the Draft EIS's section on "Alternatives to the Proposed Action" (Section 11-200-17(f)), the EIS preparer shall consider the outcome of the CWRM's decision on the IIFS. While the decision of the CWRM on the IIFS will dictate the framework for conducting the analysis of alternatives in the EIS, the EIS preparer shall nonetheless, examine, at a minimum, the "No Diversion Alternative", among others.

With respect to the Draft EIS's section on "Relationship of the Proposed Action to Land Use Plans, Policies, and Controls" (Section 11-200-17(h)), the EIS preparer shall, at a minimum, consider the following:

- Hawaii State Plan
- Hawaii State Functional Plans
- Hawaii State Land Use Designations
- Maui Countywide Policy Plan
- Maui Island Plan
- Applicable Maui Community Plans
- Maui Water Use and Development Plan
- County of Maui Zoning
- Hawaii Coastal Zone Management Program

B. ELEMENTS OF THE DRAFT EIS REQUIRING CWRM DECISION ON INTERIM INSTREAM FLOW STANDARDS

In preparing the Draft EIS, the EIS preparer shall consider those environmental, socio-economic, public services and infrastructure parameters for which the CWRM's decision to amend the IIFS is needed. For those elements requiring a CWRM decision, the completion of the Draft EIS will be deferred until such decision is rendered. **Table 8** summarizes, preliminarily, parameters to be analyzed in the Draft EIS, and identifies those elements for which a CWRM decision on the IIFS is required.

Table 8. Preliminary List of Draft EIS Issues and Dependency on CWRM Decision on IIFS

Issue Category	Topics to be Addressed in EIS	CWRM Decision Required to Complete EIS Analysis?
Existing Conditions	Existing and Surrounding Land Use	No
	Topography and Soil Characteristics	No
	Climate	No
	Hazardous Materials/Substances	No
Hydrogeology	Groundwater Interaction	Yes
	Surface-Water Flows	Yes
Fish/Wildlife Habitat	Native Vertebrates	Yes
	Invertebrates	Yes
	Invasive Species	Yes
	Abundance	Yes
	Diversity	Yes
	Distribution	Yes
	Species Sustainability	Yes
Ecosystem Maintenance	Estuaries	Yes
	Wetlands	Yes
	Riparian areas	Yes
	Nearshore Waters	Yes
Water Quality	Water Quality Standards	Yes
	Total Maximum Daily Load	Yes
Natural Hazards	Flooding	Yes
	Tsunami Exposure	No
Historic Resources	Archaeology	No
	Cultural Resources	Yes
Hawaiian Rights	Traditional and Customary Rights and Practices	Yes
	Taro Cultivation	Yes
	Appurtenant Rights	Yes
Non-Instream or End Uses of Diverted Water	Water Delivery Systems	Yes
	Domestic/Municipal Use	Yes
	Agricultural Uses	Yes
	Agricultural Productivity	Yes
	Present vs. Future Uses	Yes
	Economic Impacts	Yes
Aesthetics	Scenic Views	Yes
Recreation	Swimming	Yes
	Nature Study	Yes
	Fishing	Yes
	Hiking	No

Issue Category	Topics to be Addressed in EIS	CWRM Decision Required to Complete EIS Analysis?
Public Services	Police	No
	Fire	No
	Medical Services	No
Economy	Employment and Personal Income	Yes
	Fiscal Impacts	Yes
Infrastructure	Roadways	No
	Wastewater Systems (Private and Municipal)	No
	Water Systems (Private and Municipal)	Yes
	Drainage System	No
	Diversion Infrastructure	Yes
	Other Utilities (Electrical, Communication)	No

In addition to the assessment parameters listed in **Table 8**, the EIS preparer shall undertake an analysis of cumulative and secondary impacts. Cumulative impact is defined as:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

A secondary impact is defined as:

Effects which are caused by the action and are later in time or farther removed in distance, but are still reasonable foreseeable. Indirect effects may include growth inducing effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems. Including ecosystems.

In the context of the water lease request, secondary impacts of the noninstream uses of the diverted water should also be assessed. For example, future County domestic and agricultural water demands needed to implement anticipated growth pursuant to the Maui Island Plan may be viewed as an impact “later in time” or “further removed in distance”, but still reasonably foreseeable.

C. TECHNICAL STUDIES TO BE INCORPORATED IN THE EIS

Specific topics to be addressed in the EIS may require specialized studies to ensure that current conditions, impact analysis and proposed mitigation measures are appropriately considered by qualified specialists in their respective fields of study. Such specialists, for example, may include biologists, hydrologists, archaeologists, engineers, cultural specialists, and economists. The foregoing list of specialists are not exhaustive. For this reason, the EIS preparer shall assess the issues identified, as described previously, to determine whether specific technical studies are needed to address current conditions, analysis of impacts and potential mitigation measures.

With respect to the EIS for the lease application submitted by A&B, relevant studies which have been previously completed, are summarized in **Table 9**.

Table 9. Technical Studies Previously Completed Which Hold Relevance to the EIS Scope of Work

A. U.S. Geological Survey Studies	
1.	Stephen B. Gingerich, <i>Ground-Water Occurrence and Contribution to Streamflow, Northeast Maui, Hawaii</i> , Water-Resources Investigations Report 99-4090 (1999)
2.	Patricia J. Shade, <i>Water Budget of East Maui, Hawaii</i> , Water-Resources Investigations Report 98-4159 (1999)
3.	Stephen B. Gingerich, <i>Ground Water and Surface Water in the Haiku Area, East Maui, Hawaii</i> , Water-Resources Investigations Report 98-4142 (2000)
4.	Martha A. Scholl, Stephen B. Gingerich and Gordon W. Tribble, <i>The influence of microclimates and fog on stable isotope signatures used in interpretation of regional hydrology: East Maui, Hawaii</i> , 264 <i>Journal of Hydrology</i> 170 (2002)
5.	Stephen B. Gingerich, <i>Median and Low-Flow Characteristics for Streams under Natural and Diverted Conditions, Northeast Maui, Hawaii</i> , Scientific Investigations Report 2004-5262 (2005)
6.	John A. Engott and Thomas T. Vana, <i>Effects of Agricultural Land-Use Changes and Rainfall on Ground-Water Recharge in Central and West Maui, Hawai'i, 1926-2004</i> , Scientific Investigations Report 2007-5103 (2007)
7.	Chui Ling Cheng, <i>Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawai'i</i> , Open-File Report 2012-1115 (2012)
8.	Letter to Lenore Ohye (Acting Deputy Director of CWRM) from Stephen S. Anthony (Director of Pacific Islands Water Science Center) re Discharge Measurements, Makapipi Stream, Maui, Hawai'i, September 13-17, 2010, Nov. 5, 2010
B. Division of Aquatic Resources Studies	
1.	Glenn R. Higashi, et al., <i>Stream Survey Reports</i> prepared for CWRM, DAR and Bishop Museum, June 2008. Stream Survey Reports were prepared for: Honopou, Hanehoi, Waikamoi, Puohokamoa, Haipuaena, Punalau, Honomanu, Nuaailua, Pihaau, Ohia, Waiokamilo, Wailuanui, West Wailuaiki, East Wailuaiki, Kopiliula, Waiohue, Paakea, Kapaula, Hanawi, and Makapipi streams.
2.	Letter from Robert Nishimoto (DAR) to Ken Kawahara (CWRM) dated Apr. 1, 2010
3.	Memo from Robert Nishimoto (DAR) to Ken Kawahara (CWRM) dated May 17, 2010
4.	Letter from Dan A. Polhemus (DAR) to CWRM dated Dec. 15, 2009
5.	James E. Parham, et al., <i>The Use of Hawaiian Stream Habitat Evaluation Procedure to Provide Biological Resource Assessment in Support of Instream Flow Standards for East Maui Streams</i> , Bishop Museum and DAR, Nov. 20, 2009

6.	Glenn R. Higashi, et al. <i>Monitoring Changes in Habitat, Biota, and Connectivity Resulting From Water Returns in the East Maui Streams of East Wailua Iki, and Waiohue</i> , DAR and Bishop Museum, Jan. 6, 2015
C. Commission on Water Resources Management Studies	
1.	CWRM, <i>Instream Flow Standard Assessment Report</i> , September 2008 and December 2009. Instream Flow Standard Assessment Reports prepared for: Honopou, Hanehoi, Piinaau, Waiokamilo, Waialuanui, Waikamoi, Puohokamoa, Haipuaena, Punalau, Honomanu, Nuaailua, Ohia, West Wailuaiki, East Wailuaiki, Kopiliua, Waiohue, Paakea, Waiaaka, Kapaula, Hanawi, and Makapipi streams
D. SWCA Environmental Consultants Studies	
1.	John I. Ford, Steven W. Carothers, Robert A. Kinzie III, <i>Status of Native Hawaiian Macrofauna in East Maui Streams and Biological Considerations For the Amendment of Interim Instream Flow Standards in Selected Streams (IIFS)</i> , SWCA White Paper, June 2009
E. Cultural Studies	
1.	County of Maui Planning Department, <i>Kalo Kanu O Ka 'āina: A Cultural Landscape Study of Ke 'anae and Wailuanui, Island of Maui</i> , July 1995
2.	Kepā Maly and Onaona Maly, <i>Wai O Ke Ola: He Wahi Mo 'olelo No Maui Hikina</i> , 2002

The EIS preparer shall review the technical studies listed in **Table 9**, as well as other studies which may hold relevance to the EIS process. The EIS preparer shall determine whether the studies are current and whether they appropriately address the issues identified. Additionally, the EIS preparer shall determine whether other technical studies should be undertaken to ensure that proper analysis of issues are completed.

Preliminarily, **Table 10** provides a listing of additional technical studies which may be deemed warranted for the EIS.

Table 10. Additional Technical Studies to Support the EIS

Study	Consultant/Expert	CWRM Decision Required to Complete Technical Study? ^a
Biological Resources Survey	Biologist	Yes
Water Quality Study	Environmental Consultant	Yes
Surface and Groundwater Hydrology Assessment	Hydrologist	Yes
Agricultural Impact Assessment	Agricultural Economist	Yes
Archaeological Inventory Survey or Assessment	Archaeologist	No
Cultural Impact Assessment	Cultural Resources Expert	Yes
Diversion Infrastructure Assessment	Civil and/or Structural Engineer	Yes
Economic Impact Analysis	Economist	Yes
^a Where appropriate, preliminary work may be initiated for the foregoing studies, but completion of the studies would require CWRM's IIFS decision.		

Again, the full range of technical studies required for the EIS will be determined upon completion of the EISPN. The scope of analysis for each of the preliminarily identified studies listed in **Table 10** will need to be developed to address issues and concerns documented through the EISPN and related scoping efforts. For example, to the extent that the cultural reports previously prepared may have not addressed specific issues raised by comments to the EISPN, additional cultural impact analysis would be warranted. If the EIS preparer and cultural specialist determine that a newly prepared Cultural Impact Assessment is needed based on issues raised, then such new report would be prepared and incorporated in the Draft EIS.

**IV. SCOPE OF WORK FOR
THE PREPARATION OF THE
FINAL ENVIRONMENTAL
IMPACT STATEMENT**

IV. SCOPE OF WORK FOR THE PREPARATION OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT

The Final EIS shall be prepared in accordance with Hawaii Administrative Rules (HAR), Title 11, Chapter 200, Section 11-200-18. In summary, the EIS preparer will incorporate in the Final EIS, the following:

- The Draft EIS will be revised to incorporate substantive comments received during the consultation and review process.
- Reproduction of all letters received containing substantive questions, comments or recommendations.
- A list of persons, organizations, and public agencies commenting on the Draft EIS.
- The responses of the applicant or proposing agency to each substantive question, comment, or recommendation received in the review and consultation process.

Additionally, the EIS preparer shall prepare the Final EIS in a format which allows the reader to easily distinguish changes made to the text of the Draft EIS.

**V. PRELIMINARY TIME
SCHEDULE FOR THE
ENVIRONMENTAL IMPACT
STATEMENT PROCESS**

V. PRELIMINARY TIME SCHEDULE FOR THE ENVIRONMENTAL IMPACT STATEMENT PROCESS

A. OVERALL TIMEFRAME FOR THE PREPARATION AND PROCESSING OF THE ENVIRONMENTAL IMPACT STATEMENT

The overall timeframe for the preparation and processing of the EIS will, in part, depend on when the CWRM issues its decision with respect to the Petitions to Amend the IIFS. In this regard, two (2) timeline scenarios for the EIS preparation and processing have been developed. The scenarios presented herein are not intended to obligate the EIS preparer to complete the process within the timeframes noted. They are however, intended to provide project stakeholders a general understanding of tasks and milestones which govern the overall process timeline.

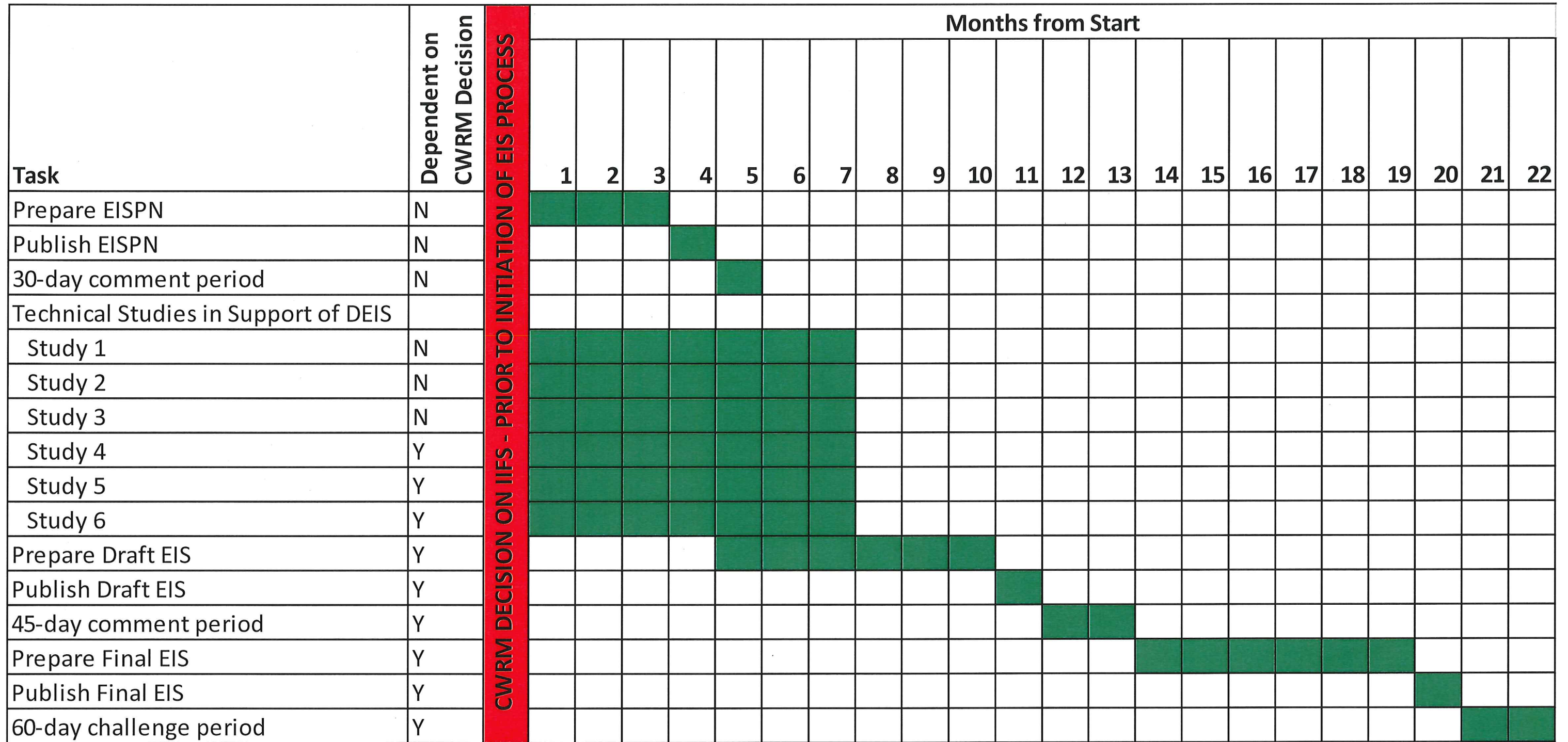
Two (2) timelines scenarios presented are as follows:

- **Scenario 1:** Timeline Assuming the CWRM Completes IIFS Decision-Making before the EIS Process is Initiated
- **Scenario 2:** Timeline Assuming the CWRM Completes IIFS Decision-Making after the EIS Process is Initiated

The formulation of the two (2) timeline scenarios assumes that there would be no appeal filed on the CWRM's decision. If an appeal is filed on the IIFS decision, the timeline scenarios would be based on the final IIFS decision once the appeal process has been completed.

1. Scenario 1 Timeline: Assumes CWRM Completes IIFS Decision-Making Before EIS Process is Initiated

The Scenario 1 Timeline is presented in **Figure 2**. The "Task" column in **Figure 2** reflects the major action items and milestones in the EIS preparation process. The "Months from Start" row at the top of the timeline indicates the estimated number of months associated with each of the tasks. The number of months assigned to each task is a best estimate only, but is considered reasonable in the context of the Chapter 343, HRS process. It is noted that the timeline presented is



Source: Munekiyo Hiraga

Figure 2 Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas
 Scenario 1: CWRM Decision On IIFS Occurs Before the EIS Process Has Been Initiated

intended to be illustrative of the general process and would be further defined through the EIS process. For example, the specific technical studies and time required to prepare each would be defined by the EIS preparer and qualified technical consultant.

As noted above, Scenario 1 assumes that the CWRM completes its IIFS decision-making before the EIS process is started. Therefore, all of the technical studies which would be undertaken in support of the EIS can be initiated at the outset of the EIS preparation process. Under this scenario, the total duration to commence and complete the EIS is approximately 22 months.

2. **Scenario 2 Timeline: Assumes CWRM Completes IIFS Decision-Making After the EIS Process is Initiated**

The Scenario 2 Timeline is presented in **Figure 3**. The timeline's format is similar to Scenario 1, with the exception that the schedule is bifurcated as follows:

- Actions/milestones of the EIS which can be completed prior to the CWRM's decision-making on the IIFS
- Actions/milestones of the EIS which would be completed after the CWRM's decision-making on the IIFS.

The red vertical bar in the schedule reflects the undetermined time wherein the CWRM's decision on the IIFS is pending. Once the CWRM's action on the IIFS is completed, the EIS process can resume. Under this scenario, about eight (8) months of EIS work can be initiated before work would stop, pending the CWRM's decision. Once the CWRM completes its decision-making on the IIFS, an additional 19 months of work is estimated. If the CWRM decision occurs during the initial eight (8) months of EIS processing, the technical studies dependent on the CWRM decision can be initiated sooner.

As noted previously, the timeline is intended to be illustrative of the overall process and details with respect to the time required to prepare the technical studies and which studies (or portions thereof) would be initiated prior to the CWRM decision would be made by the EIS preparer and technical consultants.

It is noted that depending on the timeframe in which the CWRM IIFS decision is issued, there may be circumstances where some of the EIS work and technical studies undertaken prior to the IIFS decision may need to be reexamined or updated (i.e., if the IIFS decision takes longer than anticipated/assumed which impacts the applicability of the findings of the studies).

The variance in time between Scenario 1 and Scenario 2 is attributed to the unknown timeframe in which the IIFS decision will be made and the assumption that there will be EIS technical studies which cannot be initiated or completed until after the CWRM's IIFS decision process is completed.

3. **Timeline Qualifications**

The timelines presented for Scenario 1 and Scenario 2 represent a best estimate based on general parameters for EIS processing. The illustrative timelines assume that the EIS preparer and the DLNR will coordinate and resolve issues that may arise during the preparation and processing of the EIS in a timely manner. However, it is noted that there are several factors that can influence the timeline. Such factors may include:

- Significant comments from agencies, stakeholders, or members of the public during the review of the EISPN or Draft EIS that require additional coordination or the need for additional technical studies
- Findings from technical studies that lead to new questions or comments which should be addressed in the Final EIS
- The decision of HC&S to transition away from sugar cane cultivation may affect the overall timeline for the EIS. The repurposing of lands currently used for sugar cane production to alternative agricultural uses should be considered as part of the EIS's analysis of "non-instream or end uses of diverted water" section. Accordingly, the overall EIS timeline may be affected pending A&B's determination of alternative agricultural end use plans.

4. **Pre-EIS Time Requirements**

While **Figure 2** and **Figure 3** provide general guidance with regard to timeline parameters for the EIS, additional time which should be considered in the overall process is the time required for the procurement of the EIS consultant and qualified subconsultants required to prepare the various technical studies. The

procurement process and timeline has not yet been determined. However, a reasonable estimate of time to complete this pre-EIS phase of the process is 3 to 4 months.

APPENDIX

APPENDIX A.

Order for A&B to Commence the Environmental Review Process and Deferring Decision on Petitioners' Motion to Establish Scope of Reconvened Contested Case Proceeding

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

In the Matter of Contested Case Regarding) DLNR File No.: 01-05-MA
Water Licenses at Honomanu, Keanae,)
Nahiku, and Huelo, Maui)
)
)
)
)

**ORDER FOR A&B TO COMMENCE THE ENVIRONMENTAL REVIEW
PROCESS AND DEFERRING DECISION ON PETITIONERS' MOTION TO
ESTABLISH SCOPE OF RECONVENED CONTESTED CASE PROCEEDINGS**

On January 9, 2015, Petitioner Nā Moku Aupuni O Ko'olau Hui (Nā Moku) filed a Motion to Establish Scope of Reconvened Contested Case Proceedings (Petitioner's Motion). Alexander & Baldwin, Inc. and East Maui Irrigation Company, Ltd. (collectively A&B) filed a Memorandum in Opposition to Petitioner's Motion to Establish Scope of Reconvened Contested Case Proceedings on March 27, 2015. Petitioners filed a Supplemental Memorandum in Support of Motion to Establish Scope of Reconvened Contested Case Proceedings on March 27, 2015. A&B filed a Response to Petitioners' Supplemental Memorandum in Support of Motion to Establish Scope of Reconvened Contested Case Proceedings on April 10, 2015. Nā Moku filed a Reply in Support of Petitioner's Motion to Establish Scope of Reconvened Contested Case Proceedings on April 10, 2015.

The Board of Land and Natural Resources (Board) held oral arguments on Petitioner's Motion on May 8, 2015. During the oral argument, Nā Moku agreed to withdraw its objection to A&B doing an environmental assessment, which objection had originally been asserted at the May 25, 2001 meeting of the Board. The parties also agreed that the Board would defer decision making on the motion until further notice and to facilitate discussion between the parties regarding the lawsuit pending in circuit court¹ (2015 lawsuit) and an environmental assessment.

¹ *Carmichael, et al., v. Board of Land and Natural Resources, et al.*, Civ. No. 15-1-0650-04 RAN.

On June 15, 2015, the parties submitted a status report to the Board regarding the initiation of discussions between the parties. Nā Moku re-confirmed the withdrawal of its objection to A&B preparing the environmental review documents in connection with its application for a lease. The parties also agreed on a framework for initiating work on the environmental review process. The parties were still in discussion regarding the disposition of the 2015 lawsuit. Nā Moku was to request the BLNR to defer action on Petitioner's Motion while the parties continue discussions on beginning the environmental review process prior to the Commission on Water Resource Management's (CWRM) final decision on the petitions to amend interim instream flow standards (IIFS) in east Maui. No further filings were received from the parties.


Petitioner's Motion argued that the contested case should be reconvened for the Board to require the timely preparation of an environmental assessment to disclose the impacts of the diversion of water from the four license areas (Honomanu, Keanae, Huelo and Nahiku) pursuant to revocable permits S-7263 (Honomanu), S-7264 (Huelo), S-7265 (Keanae) and S-7266 (Nahiku). Petitioner's Motion also urged to Board to reconvene the contested case in order for the Board to address its obligations pursuant to Hawaii Revised Statutes chapter 171.

During oral argument it became apparent that the key issue was the commencement of the environmental review process. Based on the records in this case and the argument presented to the Board, the Board orders A&B to commence the environmental review process in support of A&B's application for a lease of water from the license areas of Honomanu, Keanae, Huelo and Nahiku. The Board will defer decision making on Petitioner's Motion at this time.

Within sixty (60) days of this order A&B must provide to the Board a scope of work for the preparation of an environmental assessment or an environmental impact statement. The scope of work should distinguish those portions that can be undertaken prior to CWRM's final

decision on the petitions to amend IIFS in east Maui from those that require a decision from the CWRM prior to completion.² The scope of work should address, at a minimum, the content requirements contained in Hawaii Administrative Rules § 11-200-10 for an environmental assessments or § 11-200-17 for an environmental impact statement. Accompanying the scope of work should be a tentative schedule for commencement and completion of the various portions of the scope of work.

SO ORDERED this 14th day of April, 2016.



SUZANNE D. CASE³
Presiding Officer
Board of Land and Natural Resources

² The Board notes that on January 5, 2016 A&B announced that it would be transitioning out of farming sugar and would instead pursue a diversified agricultural model for its HC&S plantation on Maui. To the degree that the decision to transition away from sugar cane cultivation affects the ability of or timing for A&B to complete portions of the environmental review documents that should be noted in the scope of work.

³ The Board members have delegated authority to Suzanne Case to sign this Order on behalf of the Board.

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAI'I

In the Matter of Contested Case Regarding) DLNR File No.: 01-05-MA
Water Licenses at Honomanu, Keanae,)
Nahiku, and Huelo, Maui)
)
)
)
)
)
)
_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following document:

1. ORDER FOR A & B TO COMMENCE THE ENVIRONMENTAL REVIEW PROCESS AND DEFERRING DECISION ON PETITIONERS' MOTION TO ESTABLISH SCOPE OF RECONVENED CONTESTED CASE PROCEEDINGS

was duly served upon the following parties as indicated, by means of State Messenger or U.S. Mail, postage prepaid on April 14, 2016, addressed as follows:

Alan T. Murakami, Esq.
Camille K. Kalama, Esq.
Ashley K. Obrey, Esq.
Summer L. Sylva, Esq.
1164 Bishop Street, Suite 1205
Honolulu, Hawai'i 96813

David Schulmeister, Esq.
Elijah Yip, Esq.
1000 Bishop Street, 10th Floor
Honolulu, Hawai'i 96813

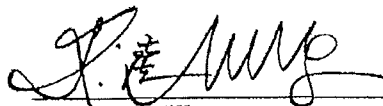
Isaac Hall, Esq.
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Wailuku, Hawai'i 96793

Robert H. Thomas, Esq.
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Honolulu, Hawai'i 96813

Patrick Wong, Esq.
Caleb Rowe, Esq.
Kristin Tarnstrom, Esq.
Dept. of Corporation Counsel
County of Maui
200 S. High Street
Wailuku, Hawai'i 96793

Linda L.W. Chow, Esq.
Land/Transportation Division
Department of the Attorney General
Kekuanao'a Building
465 South King St., Room 300
Honolulu, Hawai'i 96813

Dated: Honolulu, Hawai'i, April 14, 2016



K. Tiger Mills
Department of Land & Natural Resources
State of Hawai'i

From: Keani N. Rawlins <Keani.Rawlins@mauicounty.us>
Sent: Thursday, November 7, 2019 11:48 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Cc: Sarah D. Pajimola
Subject: EMI EIS Comments
Attachments: EMI EIS Comments - Keani Rawlins-Fernandez.pdf; ATT00001.htm

Aloha,

Please find my comments attached.

Mahalolo!
Keani Rawlins-Fernandez

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N.T. Fujita

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

November 8, 2019

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 South Beretania Street, Suite 400
Honolulu, HI 96826

**SUBJECT: Draft Environmental Impact Statement for the Proposed Lease
for the Nahiku, Ke‘anae, Honomanū, and Huelo License Areas**

Aloha e Mr. Matsukawa,

Mahalo for this opportunity to provide comments on the Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke‘anae, Honomanū, and Huelo License Areas

While I hold the seat as the Council Member for the Molokai residency area, all Maui County Council Members are at-large representatives and have kuleana to the entire County. This is a kuleana I take very seriously.

E ola i ka wai, water is life, therefore, the planning of how water is used and who controls its use can never be understated. In Hawai‘i, water is also a public trust, and the priorities are clearly outlined in the water code.

After listening to the concerns of my constituents and in reviewing what I’ve been able to of the 2,700 pages in the short 45-day comment period, the first thing I must point out is the inadequacy of time the community has been given to review this document. My request is that you will publicly announce a longer period of time for comments to be submitted. I believe 60 more days would be better, extending your internal deadline to January 7, 2020. It is clear that 45 days is all the law requires of you, but if true collaboration with the community is your intent, then extending the deadline should be something you would be more than happy to do.

I request that the Final EIS provide the information I have concerns and questions about.

- 1) The FEIS should discuss the option of not diverting any streams and what impact that would have on East Maui ecosystems and communities.

November 8, 2019
Page 2

- 2) The FEIS should provide an in-depth review of and discuss the benefits of shorter term lease options of less than 30 years, due to uncertainties of future rainfall and future water supplies.
- 3) The FEIS should include a more accurate evaluation and description of water delivery to Nahiku and consider eliminating the entire Nahiku license area from the DEIS calculations and considerations.
- 4) Nahiku would still get water even without the 30 year lease because their water comes from a development tunnel that feeds groundwater directly to Nahiku. This delivery system only serves residents in Nahiku. Lease or no lease, Nahiku would still receive water.
- 5) The FEIS should include comments from State and County departments concerned with fisheries that would be impacted by this lease.
- 6) The FEIS should include an evaluation of your plan to fund and manage eradication and/or containment of alien/invasive species.
- 7) While the DEIS assumes the state will prepare a Management Plan, why is the plan to be created/drafted after the FEIS is accepted? This seems backwards, rather, the FEIS should inform the Management Plan.
- 8) The FEIS should include an evaluation of the legal ramifications of the proposed use of “the total amount of water available after compliance with the IIFS requirements of the CWRM D&O” (p.iii: Executive Summary, DEIS) until DHHL “needs it.” Whether DHHL “needs” it or not, is not for Mahi Pono to decide, nor comment on. EMI/Mahi Pono should keep in mind that DHHL water requirements supersede EMI/Mahi Pono’s requirements, if the FEIS contains this same assumption without proper input and discussion with DHHL.

I look forward to hearing that you will gladly extend the deadline to give your new community a opportunity to have a realistic amount of time necessary to review this 2,700-page document.

Mahalo,

Keani Rawlins-Fernandez

Keani Rawlins-Fernandez
Council Vice-Chair



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Ms. Keani Rawlins-Fernandez
Maui County Council
200 South High Street
Wailuku, HI 96793
keani.rawlins@mauicounty.us

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Keani Rawlins-Fernandez:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *After listening to the concerns of my constituents and in reviewing what I’ve been able to of the 2,700 pages in the short 45-day comment period, the first thing I must point out is the inadequacy of time the community has been given to review this document. My request is that you will publicly announce a longer period of time for comments to be submitted. I believe 60 more days would be better, extending your internal deadline to January 7, 2020. It is clear that 45 days is all the law requires of you, but if true collaboration with the community is your intent, then extending the deadline should be something you would be more than happy to do.*

Response 1: We acknowledge your comments above. However, please note that there is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comments were received during the statutory comment period.

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Letter to Ms. Keani Rawlins-Fernandez
Page 2 of 9
September 3, 2021

Comment 2: *The FEIS should discuss the option of not diverting any streams and what impact that would have on East Maui ecosystems and communities.*

Response 2: We respectfully disagree with your comment. The EIS analyzed a “No Action” alternative which is assessed in Section 3.3 of the EIS that assumes no Water Lease would be issued. However, under the No Action alternative, the EMI Aqueduct System could continue to divert approximately 30% of the water available from the Collection Area, plus approximately 4.37 mgd from the privately owned lands between Honopou Stream and Māliko Gulch. That is because the rights under the 1938 Agreement are independent of the Proposed Action under consideration in this EIS.

As it relates to impacts on the East Maui ecosystems, please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS addresses native stream habitat impacts. As discussed in Section 3.4.3, the HSHEP model estimated that approximately 79.8% of total HU would be available under the No Action alternative, or put another way, the No Action alternative decreases the amount of available habitat units by approximately 20.2%. As it relates to terrestrial flora and fauna, EMI would continue operation and maintenance of the EMI Aqueduct System, then the activities would have impacts comparable to the Proposed Action as discussed in Section 3.4.8 of the EIS.

As it relates to impacts to the East Maui communities, Section 3.4.11 has been expanded to further discuss concerns associated with the No Action alternative as shown on pages 3.35 to 3.36 of the Final EIS.

Comment 3: *The FEIS should provide an in-depth review of and discuss the benefits of shorter term lease options of less than 30 years, due to uncertainties of future rainfall and future water supplies.*

Response 3: Please note that the EIS did provide an in-depth review of shorter lease terms. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that “a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.” The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central

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Letter to Ms. Keani Rawlins-Fernandez

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September 3, 2021

Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Comment 4: *The FEIS should include a more accurate evaluation and description of water delivery to Nahiku and consider eliminating the entire Nahiku license area from the DEIS calculations and considerations.*

Response 4: In response to your comment regarding the Nāhiku water delivery, please see page 2-23 of the Final EIS, which is a depiction of Figure 2-6 that has been added to the Final EIS. Please note that following publication of the Draft EIS, the applicant received additional information from the MDWS regarding the source of the water that services the Nāhiku community. A copy of the MDWS letter is included in Appendix P to the Final EIS. Please note, the description of the Nāhiku water service from Section 2.1.3.3 of the Draft EIS, has been revised to take into account clarifications from the MDWS, as shown on pages 2-21 to 2-22.

According to MDWS, EMI's West Makapipi Tunnel 2, Well No. 4806-07, which is also known as the "Nāhiku Tunnel", is the sole source of water for the MDWS Nāhiku Water Service Area. It is our understanding that EMI developed and owns the Nahiku Tunnel that is the source of the

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Letter to Ms. Keani Rawlins-Fernandez

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water. Per a 1973 Memorandum of Understanding with EMI and HC&S as amended, MDWS can draw only up to 20,000 gallons of water per twenty-four hour day to serve the Nāhiku community from properties owed by EMI and those under license from the State. EMI continues to deliver water to the Nāhiku community pursuant to a 2018 agreement which embodied the 1973 agreement as amended, which is premised upon EMI's continued receipt of permits or a lease from the State BLNR. Even though the agreement provides the MDWS a right to up to 20,000 gpd per twenty-four hour day, EMI has accommodated the needs of the Nāhiku community, which have ranged between approximately 8,345 (2018) to 40,925 (2007) gpd on a daily basis, although supply of amounts over 20,000 gpd on any given day is not required under the agreement.

With regards to your comment the entire Nāhiku portion of the License Area should be eliminated, please note that there are streams and small tributaries within the Nāhiku portion of the License Area that the EMI Aqueduct System could still divert under the Proposed Action. Hence it would not be feasible to eliminate the Nāhiku portion from the License Area. However, as a new condition included in the 2020 and 2021 water revocable permits required the removal of the Hanawā NAR from the revocable permit area and calls for A&B to continue discussions with DOFAW to identify additional forest reserve lands to be removed from the License Area. The Hanawā NAR consists of approximately 7,500 acres and is further discussed in Section 1.3.1 of the Final EIS as shown on page 1-2. It should be noted that no portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the revocable permit area will result in additional public access because the NAR rules restrict public access. However, this may not be true for other areas that DOFAW may want the BLNR to withdraw from the License Area going forward.

Comment 5: *Nahiku would still get water even without the 30 year lease because their water comes from a development tunnel that feeds groundwater directly to Nahiku. This delivery system only serves residents in Nahiku. Lease or no lease, Nahiku would still receive water.*

Response 5: As noted in Response #4 above, the "Nāhiku Tunnel", is the sole source of water for the MDWS Nāhiku Water Service Area. It is our understanding that EMI developed and owns the Nahiku Tunnel that is the source of the water. Per a 1973 Memorandum of Understanding with EMI and HC&S as amended, MDWS can draw only up to 20,000 gallons of water per twenty-four hour day to serve the Nāhiku community from properties owed by EMI and those under license from the State. EMI continues to deliver water to the Nāhiku community pursuant to a 2018 agreement which embodied the 1973 agreement as amended, which is premised upon EMI's continued receipt of permits or a lease from the State BLNR. Even though the agreement provides the MDWS a right to up to 20,000 gpd per twenty-four hour day, EMI has accommodated the needs of the Nāhiku community, which have ranged between

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approximately 8,345 (2018) to 40,925 (2007) gpd on a daily basis, although supply of amounts over 20,000 gpd on any given day is not required under the agreement. Hence, as stated in Section 3.3 of the Final EIS:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate for Upcountry Maui and Nāhiku.

Comment 6: *The FEIS should include comments from State and County departments concerned with fisheries that would be impacted by this lease.*

Response 6: Please note that the Final EIS includes all comments received during the statutory 45-day comment period, including those received from State and County departments and are reproduced in Appendix N.

As it relates to impacts on nearshore fisheries, the collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within

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Letter to Ms. Keani Rawlins-Fernandez

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estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have esturine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration

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Comment 7: *The FEIS should include an evaluation of your plan to fund and manage eradication and/or containment of alien/invasive species.*

Response 7: As discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 8: *While the DEIS assumes the state will prepare a Management Plan, why is the plan to be created/drafted after the FEIS is accepted? This seems backwards, rather, the FEIS should inform the Management Plan.*

Response 8: As noted in Response #7 above, the requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan.

Comment 9: *The FEIS should include an evaluation of the legal ramifications of the proposed use of "the total amount of water available after compliance with the IIFS requirements of the CWRM D&O" (p.iii: Executive Summary, DEIS) until DHHL "needs it." Whether DHHL "needs" it or not, is not for Mahi Pono to decide, nor comment on. EMI/Mahi Pono should keep in mind that DHHL water requirements supersede EMI/Mahi Pono's requirements, if the FEIS contains this same assumption without proper input and discussion with DHHL.*

Response 9: With regards to you comment relating to the legal ramifications of diverting water after compliance with the IIFS requirements prior to DHHL use, please note that that the State

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Letter to Ms. Keani Rawlins-Fernandez

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has yet to issue a water lease under HRS § 171-58, and, therefore, the implementation of a DHHL reservation under subsection (g) has yet to be realized. We understand that the DHHL water reservation process involves several steps before a water reservation is formally requested. One step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following acceptance by the Hawaiian Homes Commission (HHC) of the Beneficiary Consultation Report, and an authorization to the Chairperson of the HCC to formally request a water reservation, the Chairperson submits a request for a water reservation to the Commission on Water Resource Management (CWRM). CWRM approval is required to establish a DHHL water reservation for purposes of a water lease.

Section 2.1.1 of the Draft EIS explains that the DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B / EMI, Mahi Pono, the DLNR's Land Division, and DHHL staff and consultants. Section 2.1.1 has been updated in the Final EIS as shown on pages 2-4 to 2-7 to acknowledge that the results of the Beneficiary Consultation were subsequently presented to the HHC on May 30, 2019, as agenda item G-2. The HHC then passed a motion to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for a water lease from DLNR, and to reauthorize the Chairperson to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation amount in the request approved by the HHC is for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Kēōkea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This reservation amount is consistent with that projected in the Draft EIS. The revisions updating Section 2.1.1 in the Final EIS, as discussed above, are shown on pages 2-4 to 2-7 to this letter. As of the time that this response letter was drafted, it is our understanding the water reservation request has not been made to CWRM.

We concur that the statements in the Draft EIS claiming that the lessee under the proposed Water Lease would be able to use the water reserved by DHHL under HRS § 171-58(g) until such time that DHHL has an actual need for that water should not have been made. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further concur that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL as noted in a letter received from DHHL regarding the Draft EIS.

With regard to considering the impacts of DHHL physically claiming its reservation, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the

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Letter to Ms. Keani Rawlins-Fernandez
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sliding scale quantified effects based upon each 1 mgd reduction in water) and in that way addresses the possible reduction due to the DHHL reservation. The DHHL reservation was acknowledged in the Draft EIS ("Projections of the amount of government water available from the License Area at Honopou stream after taking into account the CWRM D&O, is approximately 87.95 mgd. This amount would be subject to further reduction in accordance with the DHHL reservation once called upon for use by the DHHL.").

Within the EIS, the analysis of this reduction in available water for the Water Lease lessee falls under the Reduced Water Volume alternative. Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has subsequently been updated in the Final EIS to include a comparative table in Section 3.5 as shown on pages 3-49 to 3-80.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Gina M. Flammer <Gina.Flammer@mauicounty.us>
Sent: Tuesday, October 8, 2019 4:20 PM
To: Public Comment
Cc: Kasie M. Takayama; David M. Raatz; Nicole A. Siegel; Dawn Lono; Shane M. Sinenci; Mavis I. Medeiros
Subject: Official Request
Attachments: EACP 22 Request for additional DEIS comment time.pdf

Hard copy to follow in the mail.

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

October 8, 2019

Mr. Shan Tsutsui
Mahi Pono
2200 Main Street, Ste 450
Wailuku, Hawaii 96793

Mr. Christopher Benjamin
Alexander & Baldwin
822 Bishop Street
Honolulu, Hawaii 96813

Ms. Suzanne Case
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Mr. Ian Hirokawa
Board of Land and Natural Resource
1151 Punchbowl Street
Honolulu, Hawaii 96813

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 S. Beretania Street, Ste 400
Honolulu, Hawaii 96826

**RE: Request for a time extension for the Draft EIS for East Maui Water
Leases comments**

Dear Mr. Tsutsui, Mr. Benjamin, Mr. Hirokawa, Mr. Matsukawa, and Ms. Case;

The Maui County Council Agricultural, Environmental and Cultural Preservation (EACP) Committee reviewed the above-cited draft EIS on October 7th and will meet again October 15th to finalize their comments. At the October 8th meeting, the Committee voted to request an extension for comments for the County Council and for the public in general. The committee's comments will need to be prepared and then approved at the next full county council meeting. The document is 2,700 pages and

October 8, 2019

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the public will need time to fully review all of it. In light of the County Council process and schedule, and the large size of the document, we are requesting a 60 day time extension on the comment period.

The Board of Land and Natural Resources required A&B and EMI to proceed with the EIS preparation in 2016. The applicant has been working on the document for about three years since they issued their EIS Prep Notice. The result of their three years of effort is a 2700 page document that deserves to be read and analyzed by those affected. The purpose of the draft EIS review process is to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives. Please give us the courtesy of an extension and we will provide useful feedback that should make the final EIS a better document.

Thank you for taking the time to respond to my request by October 14, 2019 so that the committee members will have your decision when they meet next. If you have any questions please contact my Executive Assistant Gina Flammer at 270-5510 or at gina.flammer@mauicounty.us.

Mahalo nui loa,

Shane Sinenci, Councilmember
East Maui District
(808) 270-7246

Cc: Scott Glen, Director, OEQC
David Raatz, Office of Council Services
Kasie Apo Takayama, Office of Council Services
Nicole Siegal, Office of Council Services



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10238-04
September 3, 2021

Councilmember Shane Sinenci
East Maui District
200 S. High Street
Wailuku, HI 96793

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Councilmember Sinenci:

Thank you for your letter dated October 8, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The Maui County Council Agricultural, Environmental and Cultural Preservation (EACP) Committee reviewed the above-cited draft EIS on October 7th and will meet again October 15th to finalize their comments. At the October 8th meeting, the Committee voted to request an extension for comments for the County Council and for the public in general. The committee’s comments will need to be prepared and then approved at the next full county council meeting. The document is 2,700 pages and the public will need time to fully review all of it. In light of the County Council process and schedule, and the large size of the document, we are requesting a 60 day time extension on the comment period.*

Response 1: We note that the Maui County Council Agricultural, Environmental, and Cultural Preservation (EACP) Committee reviewed the subject Draft EIS met on October 15th to finalize their comments. We also understand that at the October 8th meeting, the EACP Committee voted to request an extension for comments for the County Council and the public in general. With regards to your request for a 60-day time extension, please note that there is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period

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Letter to Councilmember Shane Sinenci

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for the Draft EIS was not extended. Please note that more than 400 comments were received during the statutory comment period.

Comment 2: *The Board of Land and Natural Resources required A&B and EMI to proceed with the EIS preparation in 2016. The applicant has been working on the document for about three years since they issued their EIS Prep Notice. The result of their three years of effort is a 2700 page document that deserves to be read and analyzed by those affected. The purpose of the draft EIS review process is to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives. Please give us the courtesy of an extension and we will provide useful feedback that should make the final EIS a better document.*

Response 2: Please note that the actual text of the Draft EIS is approximately 560 pages, which includes numerous graphics, and there are a total of thirteen appendices, nine of which were completed by technical consultants. We also note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). The Applicant made every reasonable effort to convey information through the Draft EIS in a manner that is accurate, thorough, and appropriately concise in order to provide the public with an opportunity to fairly analyze the potential impacts of the Proposed Action. With regards to your comment about an extension, as stated in Response #1 above, there is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended.

Comment 3: *Thank you for taking the time to respond to my request by October 14, 2019 so that the committee members will have your decision when they meet next. If you have any questions please contact my Executive Assistant Gina Flammer at 270-5510 or at gina.flammer@mauicounty.us.*

Response 3: We appreciate your interest and participation in this environmental review process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Letter to Councilmember Shane Sinenci

Page 3

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Linda Kimura <Linda.Kimura@co.maui.hi.us>
Sent: Tuesday, November 5, 2019 11:22 AM
To: Public Comment
Cc: Noreen Saito; Shay Chan Hodges; zoltanmilaskey@gmail.com;
ian.c.hirokawa@hawaii.gov
Subject: Draft EIS Comments on behalf of the Board of Water Supply, County of Maui
Attachments: 2019-11-05 Ltr to Wilson Okamoto DWS Comments.pdf; 2019-11-05 Ltr to Wilson Okamoto BWS Comments.pdf

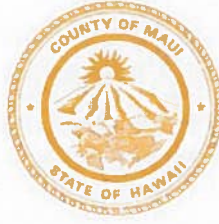
Good afternoon Mr. Matsukawa:

On behalf of the County of Maui, Board of Water Supply, attached please find the Board's comments for your consideration. Hard copy to follow. If you have any questions, please do not hesitate to contact me.

Thank you,

Linda K. Kimura, Secretary

Helene Kau, Deputy Director
Department of Water Supply
County of Maui
200 South High Street, 5th Floor
Wailuku, HI 96793
(808) 270-6190



BOARD OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauiwater.org

November 5, 2019

VIA E-Mail and U.S. Mail
waterleaseeis@wilsonokamoto.com

Mr. Earl Matsukawa AICP
Wilson Okamoto Corporation
1907 South Beretania Street, Suite 400
Honolulu, Hawaii 96826

Re: Proposed Lease (Water Lease) for Nahiku, Ke'anae, Honomanu, and
Huelo License Areas; Draft Environmental Impact Statement (DEIS)

Dear Mr. Matsukawa:

The Board of Water Supply has unanimously voted at its special meeting of November 4, 2019, to affirm Department of Water Supply's comments submitted to the State of Hawaii Board of Land and Natural Resources on November 4, 2019.

In advance, thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Zoltan Milaskey".

Zoltan Milaskey
Vice Chair

ZM:ikk

cc: Ian Hirokawa, Board of Land and Natural Resources
via E-Mail: ian.c.hirokawa@hawaii.gov and U.S. Mail
Jeffrey T. Pearson, Director, Department of Water Supply
Edward Kushi, Jr., First Deputy Corporation Counsel
Jennifer Oana, Deputy Corporation Counsel
Board of Water Supply, County of Maui

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10238-04
September 3, 2021

Mr. Zoltan Milaskey
Vice Chair
County of Maui Board of Water Supply
200 S. High Street
Wailuku, HI 96793

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Milaskey:

Thank you for comments dated November 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The Board of Water Supply has unanimously voted at its special meeting of November 4, 2019, to affirm Department of Water Supply’s comments submitted to the State of Hawaii Board of Land and Natural Resources on November 4, 2019.*

Response 1: We acknowledge that the County of Maui Board of Water Supply (BWS) at its special meeting of November 4, 2019 voted to affirm the County of Maui Department of Water Supply’s (MDWS) comments.

Comment 2: *The Board of Water Supply has voted at its special meeting of November 4, 2019, to provide the following comments on the draft environmental impact statement as follows:*

Section 4.7.3, Economic and Fiscal (page 4-146). Applicant is encouraged to include a budgetary line item for capital improvements of the EMI transmission system

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Letter to Mr. Zoltan Milaskey

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Response 2: Please note as discussed in Section 2.1 of the Final EIS, for the EMI Aqueduct System, total operational costs for labor, fringe benefits, materials, professional services, taxes, maintenance, anticipated rental payments to the State for the Water Lease, and other expenses are projected to be approximately \$2.2 million per year. Note that the Draft EIS stated these costs would be approximately \$2.5 million but have been adjusted to account for recent changes.

Comment 3: *Section 4.7.2, Social Characteristics, East Maui, Impacts and Mitigation Measures (page 4-138). Impacts and Mitigations Measures. Include "A&B" alongside of Mahi Pono as a key stakeholder. A&B, as the applicant, should participate in community outreach and reconciliation as the historically responsible party.*

Response 3: The SIA, as well as Section 4.7.2 of the EIS, recommends that there be community outreach by the Applicant in connection with issuance of the Water Lease. However, terms of the Water Lease are at the discretion of the BLNR. Should the BLNR make this a requirement of the Water Lease, the Applicant will comply with all conditions of the Water Lease.

Comment 4: *Provide a detailed plan on mitigating water losses and improve system efficiency, to include repair and maintenance of the diversion system and ditches.*

Response 4: Your Comment #4 is unclear as you do not specifically refer to which system you are speaking about; the EMI Aqueduct System or the Central Maui Field Irrigation System.

Regarding the EMI Aqueduct System, it is highly efficient. On the whole, the EMI Aqueduct System does not lose water over the entire length of the system, up to its terminus at Kamole Weir. It is not until the EMI Aqueduct System transitions into the Central Maui Field Irrigation System used in the Central Maui agricultural fields that there starts to be losses due to seepage because its agricultural ditches and reservoirs are open and are not lined. Please note that this clarification has been made throughout the Final EIS as shown on pages 2-11, 2-27, 3-12, and 4-76. However, EMI staff does conduct routine maintenance and repair on the EMI Aqueduct System. As discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7, under the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment.

Regarding the Central Maui Field Irrigation System, Mahi Pono's plans for improving irrigation efficiency is stated throughout Chapter 5 of the Draft EIS. Mahi Pono expects to invest over \$20 million to increase the efficiency of its private Central Maui Field Irrigation System in Central

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Maui (i.e., the infrastructure that distributes water from Kamole Weir to the agricultural fields and also within those fields).

As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. These new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Reducing water usage through effective irrigation ensures conservation of Hawai'i's natural resources. Please note that this information has been added to Section 2.1.4 of the Final EIS, as shown page 2-25, as well as other sections when discussed.

Comment 5: *Provide A&B, EMI, and Mahi Pono's plan to monitor the IIFS that CWRM has set*

Response 5: The IIFS required under the Commission on Water Resources Management (CWRM) Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O) is a separate process from the Water Lease process, as discussed in Section 1.3.3 of the Draft EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Please note, however, that as required by the CWRM D&O, EMI submitted a report to the CWRM one year following the date of the issuance of the D&O that outlined and discussed:

1. Modifications to diversions to meet the amended IIFS.
2. Water deliveries at Honopou Stream and Māliko Gulch, and any changes EMI ascribes to the amended IIFS.
3. Changes in stream diversions and ditch settings as Mahi Pono's irrigation requirements increase.

In addition, the requirements of the current East Maui revocable water permits specify that quarterly reports to the BLNR are required. These reports are mandated to include a statement of compliance with the IIFS. Since the CWRM D&O was issued, EMI has been working closely with the CWRM staff on the implementation of the ordered IIFS. The IIFS are being met for all

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Letter to Mr. Zoltan Milaskey

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License Area streams. It is expected, and the EIS takes into account, that compliance with the IIFS requirements under the CWRM D&O will also be required under the Proposed Action.

Comment 6: *Provide their watershed management protection plan.*

Response 6: As discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 7: *Section 5.8, Permits and Approval (page 5-175). Consider adopting an Accountability Committee, made up of volunteers, including stakeholders of East Maui, related government officials, and the operator/lessee, to ensure the terms of the water lease are being met on a regular basis*

Response 7: We acknowledge your comments. Please note, as mentioned in Response #3 above, the terms of the Water Lease are at the discretion of the BLNR. Should the BLNR make this a requirement of the Water Lease, the Applicant will comply with all conditions of the Water Lease.

Comment 8: *Lease should clearly state that the Lessee shall divert water only for its agricultural use and for the County and DHHL's use for domestic, agriculture, and municipal purposes.*

Response 8: Please note that this is consistent with the Proposed Action and the uses described in Chapter 2 of the EIS.

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Comment 9: *Pursuant to HRS Section 171-58(e), the Applicant shall provide a surety bond to ensure that the condition regarding developing and implementing a watershed management protection plan is met*

Response 9: As noted in Response #7 above, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan.

Comment 10: *The Board of Water Supply would support a shorter lease than 30 years, such as the following: 15-year lease with a 10-year compliance report that if not met, lease will not qualify for renewal (compliance report would be monitored and enforced by a government body).*

Response 10: We acknowledge that the BWS supports a shorter lease term. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes

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water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Comment 11: *In regards to Section 3.1.2, we support further consideration for recycled water use from Kahului WWRf at every level of review on this lease.*

Response 11: The availability of the use of reclaimed water from the Wailuku-Kahului Wastewater Reuse Facility (WWRf) is discussed in Draft EIS Section 3.1.1.2 (Reclaimed Water), which provides an analysis of the feasibility of the use of reclaimed water from the Wailuku-Kahului WWRf to irrigate the Central Maui fields. As discussed, the recycled water alternative using existing R-2 water from the Kahului WWRf could be considered an alternative as supplemental source. However, R-2 water has limited useability on crops. County of Maui Department of Environmental Management (DEM) does not intend to send this R-2 water to the Central Maui agricultural fields. Further consideration of this alternative has been included in Chapter 3 of the FEIS, which has also been supplemented with a discussion about the potential new reuse/effluent disposal facility in Central Maui to be located south-west of the Kahului WWRf that is being considered by the County Department of Environmental Management. See pages 3-9 to 3-11 of the Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Letter to Mr. Zoltan Milaskey
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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Marti Buckner <Marti.Buckner@co.maui.hi.us>
Sent: Tuesday, November 5, 2019 3:52 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Cc: Eva Blumenstein
Subject: MDWS Comment on the Proposed Lease
Attachments: 211001044etcEMI_DEIS.pdf

Aloha,

Please see the attached MDWS comment on the Proposed Lease for the Nahiku, Ke'anae, Honomanu and Huelo License Areas for the DEIS.

Mahalo,

Marti Buckner
Water Resources Planner

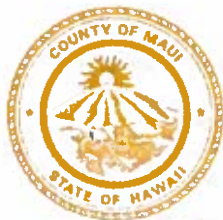
Department of Water Supply
County of Maui
200 South High Street
Wailuku, HI 96793

(808) 463-3104
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MICHAEL P. VICTORINO
Mayor

JEFFREY T. PEARSON, P.E.
Director

HELENE KAU
Deputy Director



DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauewater.org

November 4, 2019

Mr. Ian C. Hirokawa
State of Hawaii Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

**Re: Proposed Lease for the Nahiku, Ke`anae, Honomanu, and Huelo License Areas -
For the Draft Environmental Impact Statement (DEIS)**

Dear Mr. Hirokawa:

Thank you for the opportunity to comment on the consultation for the Draft Environmental Impact Statement (DEIS) for the Proposed Lease for the Nahiku, Ke`anae, Honomanu, and Huelo License Areas. The County of Maui Department of Water Supply (MDWS) has received the consultant's September 23, 2019 responses to our December 20, 2016 comments on the Preparation of an Environmental Impact Statement, and we offer the following comments on the consultant's responses and other pertinent issues to consider in the Final EIS (FEIS).

Section 2.1.4 Changing Economic and Climatic Conditions

The transitions of Mahi Pono lands to an alternative agricultural model, with variations in crop types, geographic distribution, timing, and associated future water demands and water availability are uncertain. The FEIS should address potential impacts and mitigations related to the Proposed Action in the event that: 1) alternative agricultural uses are inadequate to sustain the economic viability of the East Maui Irrigation (EMI)/Mahi Pono System over the transition period or longer term; and 2) diverted water is inadequate to balance what is available from the brackish wells, given the brackish well water use exists because, "the full needs of the 30,000 acres of Central Maui fields could not be met by stream waters diverted by the EMI/Mahi Pono Aqueduct System at all times of the year" (page 2-17).

Mr. Ian C. Hirokawa
State of Hawaii Board of Land and Natural Resources

Section 3.1.2 Alternatives Considered but Dismissed

In the event the EMI/Mahi Pono system is not economically viable, "at risk," or compromised due to the above cited issues or state of infrastructure, lack of capital to upgrade, etc.; the EIS should assess alternative solutions to mitigate the impacts upon end users, with the MDWS municipal/public use in particular as the highest priority. Subsection 3.1.2 Aqueduct Ownership could address an alternative operations model to ensure continued distribution to Kamole Weir and the Upcountry community as this is a primary objective of the Proposed Action and purpose of the Water Lease.

The groundwater development alternative is presented as 53 well sites and excessive transmission. The FEIS should consider a more feasible alternative such as a combination of available surface water in drought, supplemented by groundwater from Haiku and/or Honopou aquifers developed on A&B Inc. owned land, and using the existing transmission through Wailoa Ditch.

The recycled water alternative, using R-2 at Kahului WWRF, alternatively upgrade quality to R-1 water, should be further considered as a viable alternative and supplemental source to surface water from the proposed lease. The short term construction near Kanaha pond should be weighed against long term reliable recycled water source. Current available flow of 4 mgd will increase as Central Maui is developed.

Both alternatives along with upgrade of existing HC&S reservoirs can offset about 25 mgd, or 40% of needed surface water supply. It would be wise to develop contingency source as instream flow standards will eventually be established for all diverted streams, further reducing available water for off stream uses.

These alternatives are consistent with proposed strategies in the March 2019 Draft Water Use and Development Plan as follows:

Chapter 12 and 13, Strategies #47 and #50: "Diversify supply for agricultural use to increase reliability", and "Balance existing diversions with alternative sources for agriculture to mitigate low flow stream conditions"

Chapter 15 Strategies # 8 and #9: "Consider alternative sources of irrigation water including wastewater reuse, recycled stormwater runoff, and brackish well water in land use permitting to mitigate low flow stream conditions. Require alternative sources for irrigation when reasonably available in county discretionary land use permitting" and "Expand distribution from the Kahului Wastewater Treatment Facility and the application for planned energy crops. Potential available recycled water is 4.2 mgd".

Mr. Ian C. Hirokawa
State of Hawaii Board of Land and Natural Resources

3.2.1 Reduced Water Volume Alternative

The DEIS states that under the Reduced Water Volume alternative, the MDWS may receive no water from Wailoa Ditch or some amount up to 7.1 mgd. The FEIS should discuss the option to allow the MDWS allocation to remain at 7.1 mgd, while other allocations are potentially reduced as a proposed mitigation to ensure the adequate water supply is provided to meet the Upcountry community needs under the Reduced Water Volume alternative.

Section 4.2.2 System Efficiency

With regard to efficiency, capacity, and monitoring of systems, the DEIS addresses water losses and identifies mitigating actions to improve irrigation efficiency in the Central Maui field system. The FEIS should identify any mitigating actions to address system transmission losses which geographically occurs in the open ditch/aqueduct system in the License Area prior to Maliko Gulch/entering Mahi Pono's Central Maui field system. Field surveys by the U.S. Geological Survey (USGS) characterized seepage losses and gains in the EMI ditch system. The USGS study showed that losses are greater than gains at low flows, but at higher flows gains (from groundwater, especially in the tunnels) are greater than the losses. (CCH-MA-13-31 Minute Order 16, Hearing Officer's Proposed Findings of Fact, Conclusions of Law, & Decision and Order, FoF 377)

Section 3.4.4 and 4.2.2 Impact on Groundwater Recharge

The DEIS discussion on impact on groundwater recharge from diverted surface water under the proposed lease is limited to impact on groundwater from cessation of sugar cultivation and from stream restoration actions under the CWRM D&O. The FEIS should address the impact on groundwater recharge in the license area from the proposed lease for the purpose of developing, diverting, transporting and using government owned waters. For example, the impact on groundwater from exported stream flow in the license area could at least be compared to the benefits of imported stream flow to groundwater in Central Maui.

We hope you find this information useful.

Sincerely,



Jeffrey T Pearson, P.E.
Director

cc: DWS Engineering
Wilson Okamoto Corporation
Alexander & Baldwin Inc.

Mr. Ian C. Hirokawa
State of Hawaii Board of Land and Natural Resources

JP:EB

S:\PLANNING\Permit_Review\Projects Review\planning review\EA-EIS\EMI\Mahi Pono system
Lease BLNR



WILSON OKAMOTO
 CORPORATION
 INNOVATORS • PLANNERS • ENGINEERS

10238-04
 September 3, 2021

Mr. Jeffrey Pearson, P.E.
 Director
 County of Maui Department of Water Supply
 200 S. High Street
 Wailuku, HI 96793

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Pearson:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Section 2.1.4 Changing Economic and Climatic Conditions

Comment 1: *The transitions of Mahi Pono lands to an alternative agricultural model, with variations in crop types, geographic distribution, timing, and associated future water demands and water availability are uncertain. The FEIS should address potential impacts and mitigations related to the Proposed Action in the event that: 1) alternative agricultural uses are inadequate to sustain the economic viability of the East Maui Irrigation (EMI)/Mahi Pono System over the transition period or longer term; and...*

Response 1: Your comment that the EIS should address potential impacts and mitigations to the Proposed Action in the event that the agricultural uses proposed in Central Maui are inadequate to sustain the economic viability of the EMI Aqueduct System and the Central Maui Irrigation System is highly speculative, and therefore was not a reasonable alternative that was assessed within the EIS. The scope of the EIS assesses the anticipated environmental impacts associated

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Letter to Mr. Jeffrey Pearson

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with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS, including the proposed Mahi Pono farm plan. The environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS. However, the economic and fiscal impacts of the Proposed Action were also assessed in the Economic and Fiscal Impact Study report attached to the EIS as Appendix H and summarized in Section 4.7.3 of the EIS. The impacts of the Proposed Action on the agricultural economy are described in Section 4.7.4 of the EIS and Appendix I, the Agricultural and Related Economic Impacts report.

Moreover, Section 2.1.4 describes the Mahi Pono farm plan as follows:

Mahi Pono's farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation. All of these things must be considered when developing an evolving and feasible diversified agricultural plan for Central Maui.

As discussed in Section 3.2.1 of the EIS, Mahi Pono has expressed an intention to farm as much of the approximately 30,000 acres in Central Maui as is possible. Thus it is expected that the Mahi Pono farm activities will support the operation of the EMI Aqueduct System.

Comment 2: *The FEIS should address potential impacts and mitigations related to the Proposed Action in the event that: 2) diverted water is inadequate to balance what is available from the brackish wells, given the brackish well water use exists because, "the full needs of the 30,000 acres of Central Maui fields could not be met by stream waters diverted by the EMI /Mahi Pono Aqueduct System at all times of the year" (page 2-17).*

Response 2: With regards to your comment that the EIS should address potential impacts and mitigations to the Proposed Action in the event that diverted water is inadequate to balance what is available from the brackish wells, a shortage of diverted surface water is addressed in a number of places in the EIS, including those sections covering the Reduced Water Volume Alternative and the No Action Alternative. Please note that the Mahi Pono farm plan, provided in Table 2-1 of the Draft EIS, lists the acreage that Mahi Pono proposes to irrigate under the Proposed Action as shown below:

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Proposed Use	Acres	Gallon Per Acre a Day	Surface MGD	Ground water MGD	Total MGD	Annual MGD	% of Total
<i>Community Farm</i>	800	3,392	1.87	0.83	2.70	987	3.28%
<i>Orchards (citrus, mac nuts, beverage crops)</i>	12,850	5,089	53.39	12.04	65.43	23,883	79.48%
<i>Tropical Fruits</i>	600	4,999	2.07	0.87	2.94	1,073	3.57%
<i>Row and Annual Crops</i>	1,200	3,392	3.14	0.95	4.09	1,491	4.96%
<i>Energy Crops</i>	500	3,392	1.18	0.53	1.70	622	2.07%
<i>Pasture, irrigated</i>	4,700	1,161	4.20	1.25	5.46	1,992	6.63%
<i>Pasture, unirrigated</i>	9,100	0	0	0	0.00	0	0.00%
<i>Green Energy</i>	250	0	0	0	0.00	0	0.00%
TOTAL	30,000	2,744	65.86	16.47	82.33	30,047.77	100.00%

Hence, under the Proposed Action approximately 9,100 acres would be unirrigated. Moreover, consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture in Central Maui.

Table 3-1 of the Draft EIS provides the Mahi Pono farm plan in the event that no Water Lease is issued (resulting in less diverted water) as shown below:

Proposed Use	Acres	GPAD	Surface MGD	Groundwater MGD	Total MGD	Annual MGD	% of Total
<i>Community Farm</i>	300	3,392	0.70	0.26	0.97	353	3.25%
<i>Orchards (citrus, mac nuts, beverage crops)</i>	4,180	5,089	17.36	3.39	20.75	7,574	69.77%

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<i>Tropical Fruits</i>	200	4,999	0.69	0.26	0.95	349	3.21%
<i>Row and Annual Crops</i>	400	3,392	1.15	0.82	1.98	722	6.65%
<i>Energy Crops</i>	200	3,392	0.47	0.20	0.68	248	2.28%
<i>Pasture, irrigated</i>	3,800	1,161	3.40	1.01	4.41	1,610	14.83%
<i>Pasture, unirrigated</i>	20,670	0	0	0	0.00	0	0.00%
<i>Green Energy</i>	250	0	0	0	0.00	0	0.00%
<i>TOTAL</i>	30,000	991	23.79	5.95	29.74	10,855.16	100.00%

The impacts under the No Action alternative are discussed throughout Section 3.4 of the EIS. Under the No Action alternative, approximately 20,670 acres would be unirrigated. Food crop production and beneficial economic impacts would be significantly less than the Proposed Action as discussed in Section 3.4.13 of the Draft EIS.

Thus, it can be assumed that should the diverted water be inadequate to balance what is available from the brackish wells, there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, and an increase of about 188 acres of land in unirrigated pasture, for every 1 mgd lost.

Section 3.1.2 Alternatives Considered but Dismissed

Comment 3: *In the event the EMI/Mahi Pono system is not economically viable, "at risk," or compromised due to the above cited issues or state of infrastructure, lack of capital to upgrade, etc.; the EIS should assess alternative solutions to mitigate the impacts upon end users, with the MDWS municipal/public use in particular as the highest priority.*

Response 3: Regarding your comment that the EIS should assess alternative solutions to mitigate the impacts upon end users in the event that the EMI Aqueduct System and the Central Maui Irrigation System are not economically viable and compromised is highly speculative and therefore was not assessed as a reasonable alternative within the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of*

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developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS.

However, as noted throughout the Draft EIS, the provision of diverted East Maui stream water to the end user, MDWS, is contingent upon the issuance of the Water Lease by the terms of the water delivery agreement with EMI. As discussed in Section 3.3 of the Draft EIS:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS. At this point in time, it is unknown whether sufficient groundwater resources exist in Upcountry Maui to meet these water demands. It is anticipated that the development of alternative water-source infrastructure would be prohibitively expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment.

Section 3.4 of the EIS provides a comparative analysis of the impacts of the Reduced Water Volume Alternative and No Action Alternative, both of which would involve less or no water being delivered to MDWS. In addition, a summary table comparing the various alternatives, as well as the No Action alternative, has been added as Table 3-2 to Section 3.5 of the Final EIS as pages 3-49 to 3-80.

Comment 4: *Subsection 3.1.2 Aqueduct Ownership could address an alternative operations model to ensure continued distribution to Kamole Weir and the Upcountry community as this is a primary objective of the Proposed Action and purpose of the Water Lease.*

Response 4: Although supporting continued delivery of water to the MDWS to serve Upcountry Maui is an objective of the Proposed Action, it is not the primary objective. The primary objective of the Proposed Action is to obtain the Water Lease which will support agricultural use in the Central Maui agricultural fields as well as continued deliveries of surface water to MDWS. However, alternative ownership of the EMI Aqueduct System is acknowledged within the EIS. As discussed in EIS Section 3.1.2, the EMI Aqueduct System is privately owned and is not for sale. Therefore, the Aqueduct Ownership alternative is speculative. However, Section 3.1.2 has been updated in the Final EIS to take into account the report prepared by the County of Maui Board of Water Supply (BWS) Temporary Investigative Group (TIG) to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System (the TIG Report). See pages 3-19 to 3-20 of the Final EIS. The TIG Report

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was made public on October 16, 2019, after the publication of the Draft EIS, and a copy of the TIG Report has been provided as Appendix Q of the EIS.

Acquisition of the EMI Aqueduct System by the County or any other public entity remains purely speculative at this time. The EMI Aqueduct System is not for sale or lease, and forced acquisition of the system is projected to be prohibitively expensive, resulting in substantial costs to the public. It is noted that the TIG Report's proposal for water rates for the Central Maui agricultural fields is nearly ten times that of what is being charged at the Kula Agricultural Park (KAP) and to Upcountry agricultural users. Such a dramatic increase in water rates would have associated economic, fiscal, and social impacts, Countywide. Moreover, should the County bid for the Water Lease, it would need to utilize the water in a fashion consistent with the analysis in this EIS (or complete the necessary environmental review for any use that is not considered in this EIS). Furthermore, much of the institutional knowledge needed to properly operate the EMI Aqueduct System would be lost under any change in ownership scenario. This could reduce the efficacy of the system, result in the incapability of new ownership to properly maintain it, and possibly lead to additional and unforeseen environmental impacts that would run contrary to the perceived enhancement of environmental quality that you infer.

Comment 5: *The groundwater development alternative is presented as 53 well sites and excessive transmission. The FEIS should consider a more feasible alternative such as a combination of available surface water in drought, supplemented by groundwater from Haiku and/or Honopou aquifers developed on A&B Inc. owned land, and using the existing transmission through Wailoa Ditch.*

Response 5: Please note that the alternatives analysis provided in Chapter 3 of the Final EIS has been supplemented in response to certain comments received in response to the Draft EIS. Specifically, Section 3.1.1.1 of the Final EIS has been revised to expand the discussion on East Maui groundwater resources that was included in the Draft EIS, to include lands owned by A&B and close enough to the ditch so that it can be used for transmission. We acknowledge your comments above regarding a more feasible alternative, though the revised analysis indicates that this alternative is infeasible.

Your comment about excessive transmission is unclear. However, please note that the “groundwater alternative” discussed in Section 3.1.1.1 of the EIS, is intended to reduce the amount of surface water required for irrigation to support diversified agriculture in Central Maui. If sufficient groundwater source could be developed and coupled with the amount of surface water available under the “No Action” alternative or the “Reduced Water Volume” alternative, such a scenario could, theoretically, meet the objectives of the Proposed Action. But the analysis does not support the feasibility of this approach.

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The Central Maui aquifers have a limited amount of groundwater resources as discussed in Section 3.1.1.1 of the Final EIS:

The Central Maui agricultural fields are within the MDWS's Central Maui Aquifer Sector which includes four aquifer systems: Pā'ia, Kahului, Kamaole, and Makawao aquifers. Currently, ~~the Mahi Pono's~~ Central Maui agricultural fields have ~~10~~ ~~15~~ wells (see Figure ~~2-7~~ ~~2-5~~) in the Pā'ia, ~~and~~ Kahului, ~~and~~ Ha'ikū aquifers.¹ The average ~~amount of pumping rate from 1987 to 2006 was about 26,663 mg per year. This volume equates to a pumping average of 73 mgd. Brackish brackish~~ groundwater used on the Central Maui agricultural fields ~~from 2008 to 2013~~ was approximately ~~42.5~~ ~~70~~ mgd. (Plasch, ~~Updated 2020~~ ~~2019~~). This average daily pumping rate is well above the Sustainable Yield (SY) of ~~8~~ ~~32~~ mgd (7 mgd for the Pā'ia aquifer, ~~and~~ 1 mgd for ~~the~~ Kahului aquifer, ~~and~~ ~~24 mgd for the Ha'ikū aquifer (within the Ko'olau Aquifer Sector Area)~~), as determined by the CWRM (see detailed discussion in Section 4.2.2). This high pumping rate may have been achievable in the past due to the large amount of recharge that was occurring when sugar was being cultivated and irrigated by ~~imported~~ surface water ~~from East Maui~~. During this same period, ~~the total amount of surface water being applied to the Central Maui agricultural fields was approximately 106.61 mgd. irrigation from surface water in Central Maui was approximately 112 mgd, and an additional approximately 44 mgd of surface water was applied to the fields through system losses (evaporation and leakage) within the Central Maui field system. The recharge from the application of this volume of East Maui surface water on the Central Maui agricultural fields served to replenish these system losses were replenishing~~ the Kahului and Pā'ia aquifers and is likely the reason that pumping groundwater at rates greater than the SY was achievable.

Hence, high pumping rates in the past were possible as significantly more surface water was being diverted by the EMI Aqueduct System from East Maui to Central Maui, and the underlying aquifers recharged accordingly from the irrigation of the fields as well as the seepage losses in the on-farm distribution system (Central Maui field irrigation system which includes unlined ditches and reservoirs). Seepage losses from the on-farm distribution system, including reservoirs, were calculated using the National Engineering Handbook published by the Soil Conservation Service of the U.S. Department of Agriculture, and estimated to be approximately 22.7% of the water delivered to the fields (i.e., water lost to seepage and evaporation, and

¹ *Note that CWRM D&O, FOF 738 refers to 15 brackish water wells, which was the number of brackish wells that A&B utilized during its sugar cane operations. However, one of the 15 wells referred to, State Well No. 5128-002, does not serve the Central Maui agricultural fields and four of the other brackish wells are on lands not sold to Mahi Pono and thus are not available for Mahi Pono's use. See discussion at Section 2.1.4.*

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including other water uses, such as water used for reservoirs, fire protection, dust control, and hydroelectric uses). See Final EIS Section 2.1.4 at page 2-27; CWRM D&O, FOF 730-737. Under the Proposed Action, it is estimated that approximately 87.95 mgd will be available to divert from the License Area after compliance with the Commission on Water Resource Management (CWRM) Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O) and an additional 4.37 mgd from private lands between Honopou Stream and Maliko Gulch, for a total of 92.32 mgd as discussed in Section 2.1.2 of the Draft EIS. Specifically, Section 2.1.2 of the Draft EIS states:

With the issuance of the Water Lease under the Proposed Action, the EMI Aqueduct System would divert only the maximum allowable amount under the CWRM D&O from streams within the License Area, which is estimated to be approximately 87.95 mgd. The EMI Aqueduct System is estimated to divert an additional 4.37 mgd from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Maliko Gulch. Thus, an estimated total of approximately 92.32 mgd would be conveyed to supply the MDWS for users in Upcountry Maui, Nāhiku, and the agricultural fields in Central Maui.

As further discussed in Section 3.1.1.1 of the Draft EIS, significantly less water will be diverted to Central Maui under the Proposed Action than occurred in the past, under full sugar cultivation, which will lead to less recharge of the aquifers which will in turn decrease the amount of groundwater that can be pumped to have sustainable groundwater aquifers. Specifically, Section 3.1.1.1 of the Final EIS states:

Under the Proposed Action, less surface water will be used for irrigation in the Central Maui agricultural fields than was the case in the past, leading to less recharge of the underlying aquifers (85.22 92.32 mgd is the maximum amount of surface water estimated to be available under the Proposed Action at Māliko Gulch as compared to the recent (2008-2013) average during sugarcane operations of approximately 106.61 mgd). All of Mahi Pono's ~~the~~ existing wells are located within the Pā'ia, ~~and~~ Kahului, and Ha'ikū aquifers and, with little recharge from former sugar irrigation levels, maximum pumping exceeding the SY of 8 32 mgd would eventually increase salinity of the water drawn from the wells. At that point, pumping rates would need to be reduced to protect the aquifers. ~~Given that there are other wells in these aquifers, the safe maximum pumping rate is probably about half, or 4 mgd (Akinaka, 2019).~~

It should be noted that the groundwater in the Central Maui aquifers are brackish, meaning that they have higher salinity levels. The Mahi Pono farm plan is a diversified agricultural plan as discussed in Section 2.1.4 of the Draft EIS, which proposes orchards, tropical fruits, row and

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annual crops, and energy crops. These types of crops are not as salt tolerant as sugarcane. Usage of the groundwater is even further restricted due to higher salinity in the groundwater and less salt tolerance of the crops to be planted when compared to sugar cane. Specifically, Section 2.1.4 of the Draft EIS states:

From 1986 to 2013, A&B pumped an average of 71 mgd from the brackish water wells; during the 2008-to-2013 period, these wells delivered about 70 mgd of brackish groundwater to the lower-elevation fields. This was a suitable source of water for sugarcane during droughts because sugarcane can tolerate periodic use of water with higher salinity levels.

When the sugarcane fields were in cultivation, well water was being applied typically during dry periods, when surface water was not available for sustained periods. Sugar cane was cultivated in a twenty-four month crop cycle, providing ample time for the crop to recover from a prolonged use of brackish water. The crops planned for Mahi Pono's diversified agricultural operation may have a shorter crop cycle and be much less tolerant than sugar cane of higher salinity levels. Thus, the planned crops will generally be more vulnerable to the negative impacts on crop growth associated with prolonged exposure to brackish water and lower crop yields.

However, to increase groundwater yields, additional wells could potentially be drilled in the Central and East Maui aquifers (i.e., in the Haiku and Honopou aquifers) as discussed in Section 3.1.1.1 of the Final EIS. Specifically, Section 3.1.1.1 of the Final EIS states:

To increase groundwater supplies for irrigation of the Central Maui agricultural fields yields, additional wells could be drilled in other aquifers in Central and East Maui. The groundwater in East Maui's Ko'olau Aquifer Sector could be an alternative water source to supplement or replace some of the East Maui stream surface water for use in Central Maui. The Ko'olau Aquifer Sector generally underlies the License Area and is made up of four aquifer regions, identified as the Ha'ikū, Honopou, Waikaimoi, and Ke'anae Aquifers. (See Figure 4-17). Specifically, it is anticipated that the potential development of new wells sited on Mahi Pono / EMI owned lands within the privately owned portions of the Collection Area as well as areas between Honopou Stream and Māliko Gulch that transect the Ko'olau Aquifer Sector could potentially be pursued and transported to the MDWS and the Central Maui agricultural fields via the existing EMI Aqueduct System. These wells could be dedicated to supply water to the EMI Aqueduct System or into existing storage reservoirs that serve the same uses served by the EMI Aqueduct System. Due to the uncertainty of obtaining requisite approvals to drill new wells on State land, this alternative assumes well development on Mahi Pono /EMI land.

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For the purposes of this analysis, using the SY as the maximum amount of groundwater theoretically available for use, the development of potential well sites within the proximity to the EMI Aqueduct System were considered, together with the following environmental and feasibility factors:

1. Avoiding the siting of well development locations near streams in order to minimize potential impacts to streamflow;
2. Locating the well development sites near a collection point or opening to the EMI Aqueduct System. As a large portion of the overall EMI Aqueduct System is made up of tunnels, many areas are not accessible for the purposes of discharging pumped groundwaters into the EMI Aqueduct System;
3. Spacing potential well development sites at least 1,000 feet apart from each other to minimize drawdown effects on the aquifer; and
4. Developing the potential well sites on lands which are legally accessible by EMI staff, i.e., on EMI / Mahi Pono owned lands.

Land use restrictions based on the environmental criteria noted above, as well as the practicalities of using lands owned by EMI and/or Mahi Pono, were the major constraining factors when considering the number of new wells that could be developed.

It can also be noted that the wells were capped at 1 mgd pumping rates because of the numerous wells required in the area and the potential effects larger pumping rates could have on the aquifer. It was previously determined that the East Maui Ko'olau Aquifer Sector has a hydraulic head of around 5 to 6 feet which in turn can sustainably support wells with a max pumping capacity of 1 to 1.5 mgd. (See Mink & Yuen, Inc., Final Supplemental Environmental Impact Statement for the East Maui Water Development Plan, prepared for the Maui County Department of Water Supply, at 31 (2002), available at http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2002-11-08-MA-SFEIS-East-Maui-Water-Withdrawn.pdf.) Due to this prior determination, it is expected that the environmental impacts, such as drawdown effects, of a pumping rate greater than 1 mgd would be more severe in the East Maui environment.

It is also noted that anything larger than 1 mgd involves much higher development and operational costs, both of which make the well less cost effective. Therefore, the 1 mgd standard is used as the most cost effective well to drill. Well pumps that

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exceed 1 mgd result in the water becoming exponentially more expensive to pump, which then minimizes the benefits of the well water. Additionally, water supply wells are typically installed at 1 mgd to make repairs easier. The uniformity between wells makes ordering and stocking parts easier and more efficient, allowing for parts to be ordered in bulk, thus reducing the cost of repairs and maintenance.

Using these criteria to locate potential new wells to source the EMI Aqueduct System, and taking into consideration the CWRM SY, discussed in more detail in Section 4.2.2, approximately 26 new well sites were identified for consideration (6 in the Ke'anae Aquifer, 7 in the Waikamoi Aquifer, 7 in Honopou Aquifer, and 6 in the Ha'ikū Aquifer) (See Figure 3-1). This would provide up to 26 mgd of replacement water, which is a fraction of what the Mahi Pono farm plan needs at full implementation.

Well development costs are estimated at \$10 million per well (\$260 million total). Although the DEIS outlines and evaluates an estimated cost of approximately \$6 million per 1 mgd well, recent relevant construction cost comparisons reflect that well development in East Maui, which involve typically remote, undeveloped areas, could be much more costly. This rough estimate well development cost of \$10 million per 1 mgd well assumes includes the following:

1. The potential well sites are mostly undeveloped and away from existing roadways. Providing access to these new sites will require extensive planning and permitting in addition to being very costly. (\$2 million)
2. Due to the remoteness of the sites, power supply is not readily available. Power will need to be brought in from the nearest power sources. It is also likely that the power supply in the area may need to be upgraded to provide adequate power for the new wells. Deep wells such as these require large pumps that require lots of power to operate them. (\$1 million)
3. Preparation and development of the well site including clearing, grading, paving and securing of the site. (\$500,000)
4. Other development requirements such as material transportation and overall construction difficulties in remote areas. (\$500,000)
5. Drilling and casing the well shaft. (\$2M)
6. Mechanical work to install the pump within the well shaft and the mechanical pump controls. (\$1 million)

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7. Electrical work required to provide power and the electrical pump controls (\$1.5 million) Building structures to house the mechanical and electrical equipment and controls. (\$500,000)
8. Installing piping to transport pumped water from the well to the ditch (\$200,000)
9. Installing a receiving and diversion structure to transmit the pumped water into the ditch system. (\$200,000)
10. Testing for well capacity, the pump and its controls. (\$500,000)

These costs estimates are based on comparable wells developed in North Kona and Upcountry Maui (Akinaka, 2020). It should be noted however, that these costs estimates do not include the significant power generation costs incurred from having to continually pump the wells, or other operation and maintenance costs related to running a deep well system. These wells will be approximately 1400+ feet deep, requiring significant pumping costs. The Kuhiwa Well, located in Nāhiku, Maui, can be used for reference. It is at an elevation of 1,396 feet with a well depth of 1,411 feet.² That elevation and well depth is similar for all the proposed wells. (Akinaka, 2020).

It is also assumed that the amount of land needed for well development with access can be estimated to be around one acre. Although well sites are typically not very large, due to how remote most of the proposed well locations are, it can be assumed that lengthy access and utility developments might increase the amount of land needed. Additionally, the development of new wells and associated infrastructure would involve considerable land disturbance in areas that are relatively undisturbed now. This could increase environmental impacts, including potential impacts to undiscovered historic sites and cultural resources, and also require some slight topographic and soil changes.

Furthermore, impacts of well development will need to be assessed at each potential well site as the development of each site would carry a unique set of associated risks, impacts, and challenges. Accessibility and cost of power to supply and operate the wells reflect just a subset of such challenges. As emphasized previously, the extent and nature of these impacts will differ by location and setting. Notably, one impact that should be considered is the effect groundwater pumping will have on nearby surface water sources (streams). Often, groundwater pumping

² The probability of finding high level groundwater is unknown and is therefore not contemplated within this analysis. If high level groundwater was located, the well depths could be reduced.

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in an area may have a direct relation to lower stream flows and less surface water sources being available due to ground and surface water interaction. The resulting impacts of groundwater pumping, i.e., a reduction in available surface water, could negate any benefits that may arise from the reduction in the amount of surface water used.

Due to the lack of groundwater usage in East Maui, the relationship between surface water and groundwater in the area is largely unknown. This lack of information increases the risk involved with developing groundwater as a supplemental or replacement resource for surface water from East Maui. It should also be noted that obtaining the required land use entitlements, well construction permits, and other construction permits for associated infrastructure, would take considerable time and could face opposition that may make well development and construction challenging. Nevertheless, depending on the terms and conditions of the Water Lease, it is conceivable that the lessee could incrementally pursue well development to supplement the East Maui surface water.

On a macro level, it is well established that a range of environmental impacts are generally associated with the development of wells within the East Maui region (Maui Pineapple Company, 1991). Based on past experience of developing new wells, these impacts range from the destruction of native plants and habitats to introduction of invasive species during the construction and operation of the wells. Also, changes in the topography from development could impact natural runoff directions. The extent of impacts of this nature could be considerable depending upon the location of the sites used. Impacts will vary by location due to remoteness of the area and how much development will be needed for both the pumping site as well as the utilities and access. There are numerous other site-specific impacts that would need to be considered that would require investigations at each potential site, such as: archaeological investigations, investigating the elevation of the water table (identifying if high level water bodies are present), construction impacts (noise, dust, overgrowth on site due to rainfall), and habitat and vegetation investigation (determining if rare/endangered species are present and how development will affect them). Moreover, the amount of land needed to undertake well development will vary from site to site due to requirements to distance well development from pollutants as well as from other wells to prevent drawdown effects.

Supplying well-sourced groundwater to the EMI Aqueduct System presents an additional challenge. Keeping water at the highest elevation ditch (the Wailoa Ditch) would be optimal to mitigate the additional energy costs incurred for the distribution of the water to the end users. One of the challenges that will be faced is the fact that Wailoa Ditch consists mostly of tunnels/covered ditch areas, which

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makes getting the water into the EMI Aqueduct System challenging. This could require additional piping from the well(s) to the nearest open point on the EMI Aqueduct System as well as additional power requirements and costs. These cost and power needs are not included in the rough estimates provided above.

Development of new groundwater wells in the Ko'olau Aquifer Sector, after taking into account basic environmental considerations such as seeking to limit impacts to streams, minimizing drawdown effects on the aquifer, and accessibility to the EMI Aqueduct System, would, at best, provide only a limited amount of water. Moreover, the Ko'olau Aquifer Sector is relatively untouched in terms of well development. Groundwater impacts are expected to be more severe and noticeable as a result of drilling a well in an untouched aquifer as compared to drilling in an aquifer that is being pumped from existing wells, increasing environmental risks.

Due to the fact that potential well development would also involve the use of generally remote undisturbed lands in the State Land Use Conservation District, construction of wells and associated infrastructure would generate new and ongoing demands for electrical power. As such, even this limited well development analysis would not appear to enhance environmental quality when compared to the continued use of surface water through the existing, gravity-fed, EMI Aqueduct System, which requires no new construction or significant alterations to continue in operation.

Assuming that a single well is normally allowed to pump about 1 mgd within its area, 53 new well sites would need to be developed, each requiring site acquisition, drilling, testing and if adequate, brought into production. These wells would need to be spaced far enough to avoid salt water intrusion into the aquifer. Each well site would have an estimated development cost of \$6 million. (Akinaka, 2019). To plan, obtain permits for, and construct 53 wells would probably be in the order of \$318 million. Added to this cost would be transmission pipes, additional pumping and related energy consumption to reach higher elevations, and reservoirs. It is anticipated to be very unlikely that 53 new wells could be constructed within the Central and East Maui areas, as the environmental impacts would be considerable and permit approvals would be prohibitive. Therefore, the groundwater alternative continues to be ~~is~~ viewed as an unreasonable alternative with greater risks of adverse environmental effects than the Proposed Action, and was dismissed from further review.

Hence, the assessment included land in East Maui, including land owned by A&B.

Comment 6: *The recycled water alternative, using R-2 at Kahului WWRf, alternatively upgrade quality to R-1 water, should be further considered as a viable alternative and supplemental*

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source to surface water from the proposed lease. The short term construction near Kanaha pond should be weighed against long term reliable recycled water source. Current available flow of 4 mgd will increase as Central Maui is developed. Both alternatives along with upgrade of existing HC&S reservoirs can offset about 25 mgd, or 40% of needed surface water supply. It would be wise to develop contingency source as instream flow standards will eventually be established for all diverted streams, further reducing available water for off stream uses.

Response 6: Regarding reclaimed water, the “reclaimed water” alternative discussed in Section 3.1.1.2 of the Draft EIS is intended to supplement surface water diversions as there is not enough reclaimed water to replace all of the needed East Maui surface water. However, please note that Mahi Pono’s water needs are current and will increase over time to support a growing farm, and existing, known reclaimed water sources in Central Maui are limited. Section 3.1.1.2 (Reclaimed Water), which provides an analysis of the feasibility of the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility (WWRF) to irrigate the Central Maui fields. As discussed, the recycled water alternative using existing R-2 water from the Kahului WWRF could be considered an alternative as supplemental source. However, R-2 water has limited useability on crops. County of Maui Department of Environmental Management (DEM) does not intend to send this R-2 water to the Central Maui agricultural fields.

Section 3.1.1.2 of the EIS also explores the viability of the use of R-1 treated water, which although is not as restrictive as using R-2 waters from an agricultural viability standpoint, still carries a negative stigma when used on unprocessed agricultural food crops. While the County DEM has expressed a desire to upgrade the Kahului WWRF plant to provide R-1 treatment capabilities in the future, the upgrade has not been funded as therefore remains speculative at this time. Furthermore, this hypothetical source could at best provide only 5.5 mgd of R-1 treated waters and would require the installation of a transmission / transportation system to convey the recycled water from the Kahului WWRF to the Central Maui agricultural fields.

Additionally, Section 3.1.1.2 of the EIS acknowledges concerns raised about the Wailuku-Kahului WWRF being located in a hazardous and exposed location, at the front of a tsunami flood zone and a 3.2 feet sea level rise exposure area, rendering it a vulnerable public facility. Further environmental concerns with upgrading this facility are present as it would require construction near Kanahā Pond, which is designated a s State wildlife sanctuary, and other concerns with potential impacts to groundwater, surface water, and coastal water pollution. Thus, this alternative would provide only a limited amount of water at the risk of potentially significant environmental impacts.

Further consideration of this alternative has been included in Chapter 3 of the Final EIS, which has also been supplemented with a discussion about the potential new reuse/effluent disposal

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facility in Central Maui to be located south-west of the Kahului WWRF that is being considered by the County DEM. See Final EIS pages 3-9 to 3-11.

Hence, minimal reclaimed water can be relied upon for Mahi Pono's farm plan as the present flow is approximately 7.9 mgd. Moreover, the facility only produces R-2 water which can minimally be applied to the crops proposed in the Mahi Pono farm plan, so it can only serve a small percentage of Mahi Pono's needs. We recognize that there are plans in place to upgrade the Kahului WWRF to an R-1 treatment facility which reclaimed water can be used for food crops. However, it is anticipated that this upgrade would not occur until 2026-2028. As shown above, Section 3.1.1.2 of the Final EIS has been updated to further discuss the County's current plans regarding their reuse / disposal system.

Regarding your comment about the upgrading existing reservoirs, this is discussed in Section 3.1.1.3 of the Draft EIS. The total existing storage can provide approximately 16 days based on the estimated available surface water for diversion after compliance with the CWRM D&O. However, it should be noted that the existing reservoirs are filled when flows through the EMI Aqueduct System exceed the irrigation needs. Specifically, Section 3.1.1.3 of the Final EIS states:

The existing 41 reservoirs are fed by the EMI Aqueduct System surface water diversions so they can be filled when the amount of water delivered exceeds the amount used. The EMI Aqueduct System, however, is not designed to capture and convey high-volume freshet flows which overwhelm and bypass the diversions. ~~If such freshet flows (in excess of the IIFS standards under the CWRM D&O) could be captured, it could significantly increase storage capacity.~~ As discussed in Section 2.1.4, an estimated 85.22 mgd gross total of surface water (less Central Maui Field Irrigation System losses, a net estimated 65.88 mgd) will be needed to support Mahi Pono's farm plan at full implementation. Currently, the size and location of the existing reservoirs, as well as water availability do not lend themselves to providing significant back-up storage. Rather, the reservoirs are generally used for operational purposes, to move water to different fields.

However, please note that Section 3.1.1.3 of the Final EIS has been to expand on the discussion of improving existing storage facilities that was included in the Draft EIS.

Regarding your comment about all diverted streams eventually having an amended IIFS is too speculative to assess or discuss at this time, in this EIS. However, a "reduced water volume" alternative is discussed in Section 3.2.1 of the EIS and the impacts of this alternative are analyzed throughout Section 3.4 of the EIS.

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Comment 7: *These alternatives are consistent with proposed strategies in the March 2019 Draft Water Use and Development Plan as follows:*

Chapter 12 and 13, Strategies #47 and #50: "Diversify supply for agricultural use. to increase reliability", and "Balance existing diversions with alternative sources for agriculture to mitigate low flow stream conditions"

Chapter 15 Strategies # 8 and #9: "Consider alternative sources of irrigation water including wastewater reuse, recycled stormwater runoff, and brackish well water in land use permitting to mitigate low flow stream conditions. Require alternative sources for irrigation when reasonably available in county discretionary land use permitting" and "Expand distribution from the Kahului Wastewater Treatment Facility and the application for planned energy crops. Potential available recycled water is 4.2 mgd".

Response 7: We acknowledge your comments and understand that your proposed alternative is consistent with the above strategies from the March 2019 Draft Water Use and Development Plan. As discussed above in Responses 3 through 6 above, several alternatives to the Proposed Action were considered in the EIS, including alternative sources of water such as groundwater wells, the use of reclaimed water, desalinization, and added reservoir storage. Please note that the alternatives analysis provided in Chapter 3 of the Final EIS has been supplemented to address certain comments received in response to the Draft EIS as shown on pages 3-2 to 3-19.

Comment 8: *3.2.1 Reduced Water Volume Alternative*

The DEIS states that under the Reduced Water Volume alternative, the MDWS may receive no water from Wailoa Ditch or some amount up to 7.1mgd. The FEIS should discuss the option to allow the MDWS allocation to remain at 7.1mgd, while other allocations are potentially reduced as a proposed mitigation to ensure the adequate water supply is provided to meet the Upcountry community needs under the Reduced Water Volume alternative.

Response 8: As noted in Response #3 above, the existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if less water is awarded than what is allowed under the Proposed Action, allocation to MDWS may need to be reduced as well. Specifically, as discussed in Section 3.2.1 of the Draft EIS:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. Under the Reduced Water Volume alternative, depending on the amount of water authorized under the

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Water Lease, the MDWS may receive no water from the Wailoa Ditch or some amount up to 7.1 mgd. The greater the reduction in the amount authorized under the Water Lease, proportionally less water will be available to the MDWS.

Your comment that the EIS should discuss an option that allow MDWS allocation to remain at 7.1 mgd, while other allocations are potentially reduced falls under “Reduced Water Volume” alternative. As noted above, under the Reduced Water Volume alternative, MDWS may receive some amount up to 7.1 mgd, depending on the amount of the reduction. If the MDWS allocation were to remain at 7.1 mgd and other allocations reduced, as discussed in Section 3.4.13 of the EIS:

For each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be a reduction of about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture, a reduction in direct sales on Maui of about \$1.7 million per year, a reduction in direct and indirect sales on Maui and O’ahu of about \$3.3 million per year, about 8.5 fewer direct jobs on Maui and about 12 fewer direct-and-indirect jobs on Maui and O’ahu, and a reduction in State revenues of about \$50,000 per year.

Thus, a reduction of the allocation of water to the Central Maui agricultural fields under such a scenario would result in significant adverse impacts to agricultural production in the Central Maui agricultural fields with related economic impacts.

Comment 9: Section 4.2.2 System Efficiency

With regard to efficiency, capacity, and monitoring of systems, the DEIS addresses water losses and identifies mitigating actions to improve irrigation efficiency in the Central Maui field system. The FEIS should identify any mitigating actions to address system transmission losses which geographically occurs in the open ditch/aqueduct system in the License Area prior to Maliko Gulch/entering Mahi Pone's Central Maui field system. Field surveys by the U.S. Geological Survey (USGS) characterized seepage losses and gains in the EMI ditch system. The USGS study showed that losses are greater than gains at low flows, but at higher flows gains (from groundwater, especially in the tunnels) are greater than the losses. (CCH-MA-13-31 Minute Order 16, Hearing Officer's Proposed Findings of Fact, Conclusions of Law, & Decision and Order, FoF 377)

Response 9: Please note that the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so

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without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System. Hence, it is not necessary to identify any mitigative measures for the EMI Aqueduct System as a whole. Any improvements made to decrease losses during low flows would only lessen the gains made from infiltration during high flows.

Comment 10: Section 3.4.4 and 4.2.2 Impact on Groundwater Recharge

The DEIS discussion on impact on groundwater recharge from diverted surface water under the proposed lease is limited to impact on groundwater from cessation of sugar cultivation and from stream restoration actions under the CWRM D&O. The FEIS should address the impact on groundwater recharge in the license area from the proposed lease for the purpose of developing, diverting, transporting and using government owned waters. For example, the impact on groundwater from exported stream flow in the license area could at least be compared to the benefits of imported stream flow to groundwater in Central Maui.

Response 10: Please note that groundwater impacts from the Proposed Action are discussed for all the impacted regions: East Maui, Upcountry Maui, and Central Maui in Section 4.2.2 of the EIS. Specifically, as it relates to the License Area in East Maui, Section 4.2.2 of the Final EIS states:

The Proposed Action is limited to the issuance of the Water Lease for the subject License Area, which would enable the lessee to continue operation of the EMI Aqueduct System that has been in operation for over a century. The Proposed Action continues the use of the EMI Aqueduct System ~~system~~ for the transport of surface water, and allows the lessee or its permittees, to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System. In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of the DHHL. No significant impacts on groundwater in the region are anticipated.

Groundwater levels are expected to be greater than historic levels due to increased recharge from stream restoration actions under the CWRM D&O. Moreover, according to a USGS publication (2019) on estimating the groundwater of Maui through 2035, the Ko'olau Aquifer System is expected to see an increase in groundwater from recharge rates due to changes in rainfall patterns from future climate change trends. Thus, even lesser impacts to East Maui groundwater are anticipated as a result of the Proposed Action.

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Hence, impacts on East Maui groundwater resources from the Proposed Action are expected to be positive as there will be less surface water diverted than historically during sugarcane operations.

However, the impacts on Central Maui groundwater resources will be negative under the Proposed Action and alternatives when compared to when sugarcane was in operation due to less surface water from East Maui being diverted and used in the Central Maui agricultural fields, thereby resulting in less recharge rates of the Central Maui aquifers and decreased sustainable yield. See FEIS Section 4.2.2 at page 4-75 to 4-77. Changes in rainfall patterns may further decrease the amount available for pumpage.

Section 4.2.2 at pages 4-72 to 4-73 also discusses the impacts of the Proposed Action on groundwater in Upcountry Maui. The Proposed Action will maintain current conditions and no significant impacts are expected to groundwater resources in Upcountry Maui as surface water deliveries from the EMI Aqueduct System are expected to continue. This section also recognizes that dry weather or conditions from future climate change could exacerbate the duration of periods of low rainfall, in which case less water can be diverted from the License Area streams. In those periods, dependence on groundwater resources in Upcountry Maui may increase and/or water conservation measures may be necessary.

Moreover, please note that Section 4.2.2 of the Final EIS has been revised as on page 4-71 for East Maui and page 4-76 for Central Maui of the FEIS, to take into account a 2019 USGS publication on estimating the groundwater of Maui through 2035.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.³ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

³ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Tamara A. Paltin <Tamara.Paltin@mauicounty.us>
Sent: Thursday, November 7, 2019 9:55 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Proposed Water Lease for Nahiku,Keanae, Honomanu and Huelo License Area DEIS Comments
Attachments: DEIS-WaterLease 2019-11-07.pdf

Aloha Mr. Hirokawa and Mr. Matsukawa,

Please find attached my comments to the DEIS for Proposed East Maui Water Lease. If there are any questions, please contact my office at (808) 270-5504.

Mahalo, Tamara

Tamara Paltin, Councilmember
Maui County Council
Tel: (808) 270-5504

200 S. High Street, Suite 812
Wailuku, HI 96793

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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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November 7, 2019

Suzanne Case, Chair
and Members of the Board of Land &
Natural Resources, State of Hawai`i
1151 Punchbowl St.
Honolulu, HI 96813

Aloha Chair Case and Members of the Board,

**SUBJECT: DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR A
PROPOSED 30-YEAR WATER LEASE FOR THE NĀHIKU,
KE`ANAE, HONOMANŪ AND HUELO, MAUI LICENSE AREAS**

Mahalo for this opportunity to provide input on the Draft Environmental Impact Statement ("DEIS") submitted by Alexander & Baldwin, Inc. ("A&B") and East Maui Irrigation Company, Ltd. ("EMI") for a proposed water lease for the Nāhiku, Ke`anae, Honomanū, and Huelo License Areas. Following are my broad and cursory comments to the DEIS.

Inadequate time frame for review and comment of 2,700-page document.

First thing, please grant an extension to the 45-day comment period.

This is such a voluminous and technical document to read through and process. One of the purposes of the Environmental Impact Statement process is to afford the public the opportunity to weigh in on impacts and mitigating factors of proposals utilizing public lands, money and/or resources. Allowing for more comment time considering the size and subject matter of the DEIS will afford for additional community engagement and well thought-out input.

Additionally, with work, community and family responsibilities, 45 days is simply insufficient to put together proper comments.

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New details and truths surrounding the illegal occupation of Hawai`i.

The DEIS document does not include any new acknowledgement of facts and truths surrounding the illegal occupation of Hawai`i that have recently come to light.

For over a century Maui's water resources have been tied up in leases for the benefit of the sugar and pineapple industries on Maui. Control of our east Maui water resources was not held in trust, but rather, essentially privatized for economic gain. Big agriculture was the accepted foundational reason provided to the community for the original leases.

Today, we are equipped with truthful details and a better understanding of the rule of law as it applies to Hawai`i's political history – which must not be denied or go unmentioned in this important DEIS having to do with our publicly held water trust.

With the release of Dr. Keanu Sai's doctoral thesis work on the status of the Hawaiian Kingdom under international law, it is questionable if the Board of Land and Natural Resources ("BLNR") actually has the authority to be granting this lease as it is unclear how the United States and therefore the State of Hawai`i has legal authority here in Kō Hawai`i Pae `Āina.

The United States constitution clearly states that for one independent nation to become a part of another independent nation there must be a treaty of annexation. A joint resolution of congress has no effect outside the borders of the United States to annex Hawai`i, which achieved independent nation status on November 28, 1843.

What is the United States and thus the "State of Hawai`i" then doing? They are occupying a sovereign country and allowing things to occur that are not in Hawai`i's best interests such as allowing foreign entities to control our resources for their profit at the expense of the people of these lands.

Unknown effects of climate change & global warming to the resource.

Maui County and the State of Hawai`i are in its infant stages of understanding potential impacts of climate change and global warming to our ecosystems that serve as links to our water sources.

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No data exists to safely assure that the resource will not be impacted by “business as usual” behavior, considering the factors of climate change and global warming. This document does not appear to include mitigating formulas for managing our fresh water resource in this new era of drastic climate change.

Sufficient sustainable balance of resource for healthy stream life and native tenant uses.

If the BLNR is intent on moving forward with this lease process they need to ensure that there is enough water left in all streams to sustain a healthy balance of aquatic habitat for indigenous stream life, our nearshore fisheries, kalo farmers and native tenant rights.

This cannot be done if there is no real-time method of monitoring in-stream flows. Setting in-stream flow standards mean nothing if they are not followed, enforced and adequately consistently measured and this has been the problem for Maui County to date.

Riding the line (as proposed) between the amount of water CWRM’s D&O requires for full stream restoration for 10 streams plus partial flow restoration to 12 additional streams in the subject area and requesting to use what remains leaves no “wobble room” for any unknown factors.

The impact of diverting water from Nāhiku is a severe impact to kalo farmers and should be stricken from the lease proposal.

A record of questionable past management.

Based on Commission on Water Resource Management (“CWRM”), A&B and EMI’s historical lack of management in East Maui and the ongoing water wars, I do not think a 30-year lease is appropriate. These entities need to be held accountable for meeting certain requirements in a timely manner and improving and maintaining the system that they want to continue to use. Based on past performance by all entities, any lease issued needs to be revisited every one or two years to ensure that the lessee is in fact using the water for their farming operations and that their agricultural plans are moving forward and they are using all of the water they are requesting and that they are taking steps to maintain the system so that water is not being wasted.

Hawaii Revised Statutes requires lessees of water rights and the Department of Land and Natural Resources (“DLNR”) to jointly develop and implement a watershed management plan. For all the years A&B and EMI have been taking

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water from East Maui, under the oversight of CWRM and DLNR, only now we are talking about developing and implementing a Watershed Management Plan?

For over at least a decade, (and maybe more) the County of Maui has pro-actively appropriated hundreds of thousands of dollars for watershed protection in the East Maui area, with no law mandating us to fund this effort. But still we are only able to manage the Miconia (rather than eradicate), we are all holding our breath over here hoping we don't experience the devastation from ROD that Hawaii island has experienced. Invasive species are a reality, and there doesn't seem to be enough attention and "wiggle room" to respond in the event of a catastrophic environmental change to our forest and watershed.

New available technologies with potential to extend the water cycle.

It is hard to predict what the landscape, water availability and demand will be 30 years from now, it is hard to predict the technologies that will be available so far in the future especially with all of the uncertainties we face with climate change and sea level rise. We do need to share the water so that first and foremost the water needs of the people of East Maui are taken care of and then our upcountry existing residents and then our agriculture operations, however there are things that we need to do to address our wastewater situation in the tsunami inundation zone with sea level rise presenting real threats.

A&B has dedicated lands to the county for wastewater and the technology is available to reclaim the water to standards which agriculture can use. The county needs to start building wastewater treatment facilities more inland that do not inject effluent into the ocean. That is a valuable resource, we need to phase out the use of the Kahului wastewater treatment facility and build treatment facilities in the area of Mahi Pono lands thus making use of reclaimed waters for agriculture and alleviating the taking of East Maui waters. This can be done prior to 30 years and thus the lease should not be for that long.

No established track record for resource recipient Mahi-Pono.

The public is still waiting and watching to see what will be done with the forty-one thousand acres that they knew to be HC&S. Granting any type of lengthy license is russian roulette. They have no social equity in our community, they have no agricultural equity, and whether or not A&B, EMI or Mahi Pono's name is on the license, its still a risk because the primary and missing element that may have justified the takings in the past is no longer present – and that's the plantation as we knew it.

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Maui County, BLNR, CWRM, and the State of Hawaii should take this transition period very slowly and with an abundance of caution. Start with short term leases, that are assessed annually. As Mahi Pono's credibility builds, so may the length of the leases, provided climate change effects cooperate in a favorable way.

Mahi Pono has no experience of managing a Hawaii public trust resource and no viable long-term farm plan that has been presented to the public prior to what is in this DEIS to validate the public allowing the control of their resource be tied up in a long-term license to private for-profit parties.

In closing, I again respectfully request that the review period be extended to allow for more in-depth analysis and comment by the stakeholders i.e. the public.

Sincerely,


TAMARA PALTIN
Council Member

cc: Alexander & Baldwin, Inc. c/o Wilson Okamoto Corp
East Maui Irrigation Company, Ltd c/o Wilson Okamoto Corp
Governor David Ige
Suzanne Case, Chair
and Members of the Commission on Water Resource Management
J. Kalani English, Senate Majority Leader and East Maui Senate
Residency Seat, Hawaii State Legislature
Lynn DeCoite, East Maui House Representative Residency Seat,
Hawaii State Legislature
Shane Sinenci, Chair - Environmental, Agricultural, and Cultural
Preservation Committee (EACP-22), Maui County Council



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Councilmember Tamara Paltin
200 S. High Street
Wailuku, HI 96793

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Councilmember Paltin:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: Inadequate time frame for review and comment of 2,700-page document.
First thing, please grant an extension to the 45-day comment period.

This is such a voluminous and technical document to read through and process. One of the purposes of the Environmental Impact Statement process is to afford the public the opportunity to weigh in on impacts and mitigating factors of proposals utilizing public lands, money and/or resources. Allowing for more comment time considering the size and subject matter of the DEIS will afford for additional community engagement and well thought-out input.

Additionally, with work, community and family responsibilities, 45 days is simply insufficient to put together proper comments.

Response 1: We acknowledge your comments requesting a time extension to the Draft EIS public comment period to allow for additional public comment. Please note that there is no statutory mechanism that provides for time extensions to the public comment period of 45 days, which is set forth under Hawai‘i Revised Statutes (HRS) § 343-5. Hence, the comment period

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for the Draft EIS could not be extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 2: *New details and truths surrounding the illegal occupation of Hawai‘i.*

The DEIS document does not include any new acknowledgement of facts and truths surrounding the illegal occupation of Hawaii that have recently come to light.

Response 2: Please note that this is not within scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 3: *For over a century Maui’s water resources have been tied up in leases for the benefit of the sugar and pineapple industries on Maui. Control of our east Maui water resources was not held in trust, but rather, essentially privatized for economic gain. Big agriculture was the accepted foundational reason provided to the community for the original leases.*

Today, we are equipped with truthful details and a better understanding of the rule of law as it applies to Hawaii’s political history — which must not be denied or go unmentioned in this important DEIS having to do with our publicly held water trust.

Response 3: We acknowledge your comments. Please note that Hawaii's history has not gone unmentioned or denied in the EIS. Section 1.3 of the Draft EIS included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui. Historical context is also provided through the Archaeological Literature Review and Field Inspection (LRFI), (Appendix E), prepared by Cultural Surveys Hawaii (CSH) which includes an analysis of the natural and built environment of the License Area and a comprehensive review of traditional and historic background information of the region, including a review of previous archaeological studies and findings in the region. The LRFI has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe‘e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui. It also provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. The Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area, and also provides information on traditional and historical accounts of East Maui. The CIA has been supplemented with information related to additional outreach

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conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) also provides an overview of the history of Maui Island that helped to shape the current social environment. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

With regards to your comment about the public trust, we acknowledge that should the Water Lease be issued, it will be subject to the Public Trust Doctrine as well as the State Water Code. Section 1.5, titled "The Public Trust Doctrine" has been added to the Final EIS to explicitly address the Public Trust Doctrine. See Final EIS pages 1-25 to 1-27. The dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine.

Comment 4: *With the release of Dr. Keanu Sais doctoral thesis work on the status of the Hawaiian Kingdom under international law, it is questionable if the Board of Land and Natural Resources ("BLNR") actually has the authority to be granting this lease as it is unclear how the United States and therefore the State of Hawaii has legal authority here in Kō Hawaii Pae Aina.*

The United States constitution clearly states that for one independent nation to become a part of another independent nation there must be a treaty of annexation. A joint resolution of congress has no effect outside the borders of the United States to annex Hawaii, which achieved independent nation status on November 28, 1843.

What is the United States and thus the State of Hawaii' then doing? They are occupying a sovereign country and allowing things to occur that are not in Hawaii's best interests such as allowing foreign entities to control our resources for their profit at the expense of the people of these lands.

Response 4: Please note that this EIS is being prepared under current laws and statutes. It is not within scope of the EIS to analyze the points mentioned in your Comment #4 above. As stated in Response #2 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using

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government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 5: Unknown effects of climate change & global warming to the resource.

Maui County and the State of Hawaii are in its infant stages of understanding potential impacts of climate change and global warming to our ecosystems that serve as links to our water sources.

No data exists to safely assure that the resource will not be impacted by "business as usual" behavior, considering the factors of climate change and global warming. This document does not appear to include mitigating formulas for managing our fresh water resource in this new era of drastic climate change.

Response 5: Please note that the EIS includes the most recent information regarding climate change within its analysis. As discussed in Section 4.3.1 of the Draft EIS:

Regular trade winds are key in driving the Hawai'i's hydrological cycle, generating rainfall which helps maintain Maui's water supply. However, a recent study showed that Hawai'i's trade winds have decreased in frequency by approximately 30% over the past 37 years, from 291 days per year in 1973, to 210 days per year in 2009 (Garza et. al, 2012). The decrease in the trade winds could have serious implications for the Hawaiian Islands, including adversely impacting local agriculture, native ecosystems and endangered species, and the State's limited freshwater supply.

Overall, the State of Hawai'i is experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014)...

Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. Such rainfall patterns increase the amount of stormwater runoff flowing through the region, including through the streams within the License Area that reach the shoreline. The expected

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climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. (SE & MRC, 2019).

Hence, the EIS recognizes that the State of Hawai‘i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). As such, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall. Section 4.3.1 of the Final EIS has been expanded to include information from the Archaeological Literature Review and Field Inspection (LRFI) report (Appendix E), the Cultural Impact Assessment (CIA) report (Appendix F), and the Terrestrial Flora and Fauna Technical Report (Appendix C) prepared for this EIS as shown on pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed. Specifically, Section 4.3.1 of the Final EIS states:

Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. According to a USGS publication (2019) on estimating the groundwater of Maui through 2035, the Ko‘olau Aquifer System is expected to see an increase in groundwater from recharge rates due to changes in rainfall patterns from future climate change trends. Such rainfall patterns increase the amount of stormwater runoff flowing through the region, including through the streams within the License Area that reach the shoreline. The expected climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. (SE & MRC, 2019).

Historic properities and archeological resources, as well as cultural resources and practices, located within chronic flooding areas can experience potential adverse effects due to climate change. For example, burial sites along the Hāmākuapoko

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District coastline, located approximately 15.0 km (9.3 miles) from the License Area, are being impacted by high surf and high tide events leading to the inadvertent exposure and discovery of human skeletal remains (SHPD 2019a, 2019b, 2020).

As discussed by Tetra Tech and DLNR Office of Conservation and Coastal Lands (2017), the low-lying traditional landscape of the Ke‘anae Peninsula in East Maui is particularly vulnerable to sea level rise, which is discussed further in Section 4.3.2 below. Potential impacts could include inundation of near coastal lo‘i and historic structures or indirect impacts to water quality in pond fields with the introduction of increased salinity levels.

Impacts and Mitigation Measures

The Proposed Action is limited to the issuance of the Water Lease for the subject License Area, which would enable the lessee to continue operation of the EMI Aqueduct System that has been in operation for over a century. The Proposed Action continues the use of the EMI Aqueduct System system for the transport of surface water, and allows the lessee or its permittees, to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System. In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of the DHHL. No significant impacts on climate in East Maui are anticipated as a result of the Proposed Action. Moreover, because the EMI Aqueduct System is a gravity fed system it is extremely energy efficient and does not rely on non-renewable sources of energy for its operation. A number of comments to the DEIS requested additional information related to climate change. As discussed above, according to a USGS publication (2019) on estimating the groundwater of Maui through 2035, the Ko‘olau Aquifer System is expected to see an increase in groundwater from recharge rates due to changes in rainfall patterns from future climate change trends. However, it is noted that climate change also may have the potential to decrease rainfall amounts within the License Area, therefore causing a decrease in stream flow, which could result in an increase in required maintenance and repair of the EMI Aqueduct System. Should happen, repair and maintenance activities would not exceed in scope the current (and long-standing) nature of EMI's maintenance and repair activities, as discussed in Section 2.1.2.

As a general matter, climate change impacts tend to favor invasive non-native botanical species at the expense of native forests. Droughts increase the incidence of fire, which in Hawai‘i, tends to favor warm-season grasses and other invasive species (Hughes et al. 1991; Loope and Giambelluca 1998). Flooding and hurricanes open the forest canopy, and that can

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promote erosion and invasion of non-native pioneer species into the forest understory (Loope and Giambelluca 1998).

Climatic changes would have the most impact on species that require specialized habitats within microclimates, such as endemic damselflies and endemic honeycreepers that are restricted to habitats free of diseases transmitted by mosquitoes. Small environmental changes to microclimates may remove opportunities for foraging, reproduction, and other life history requirements that these species depend on. These changes may ultimately cause a decrease in populations, local extirpations, and in some cases extinction. In addition, an increase in temperature would also be expected to favor invasive alien species at the expense of native vegetation and move alien-dominated forest upward in elevation, ultimately driving out native species through competition (Loope and Giambelluca 1998).

Warming temperatures associated with climate change would allow the Culex mosquito to expand into unoccupied habitat and allow for the development of diseases such as avian malaria above elevations previously occupied (Freed et al. 2005; Samuel et al. 2012). Increasing temperatures would likely increase Hawaiian forest bird exposure to and increase transmission of avian malaria. Hawaiian forest birds that are susceptible to and cannot tolerate avian malaria would suffer population declines and may become extinct in the wild (Samuel et al. 2012).

Although the USGS publication (2019) has estimated increased rainfall in East Maui as a result of changes in rainfall patterns from future climate change changes, climate change could result in lower rainfall and thus lower levels of streamflow. Notwithstanding, compliance with the IIFS under the CWRM D&O will be required. Hence less flow would be available for the EMI Aqueduct System to divert, which in turn means less water for MDWS and less water to irrigate the Central Maui agricultural fields.

However, the The exact nature of how the climate will change and impacts from any changes is unknown. As research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies for climatic changes.

We disagree with your comment that the EIS does not include mitigation measures for managing freshwater resources. It is recognized that Hawai'i's fresh water originates from the forest, which capture and absorb hundreds of inches of rain each year, allowing for slow infiltration and replenishment of our aquifers and streams. Based upon this understanding, the legislature added sub-section (e) to HRS § 171-58, requiring the incorporation of a watershed management plan into all water lease agreements to help protect freshwater resources (surface and groundwater).

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In addition to sustaining ground and surface water supplies, healthy forests reduce erosion by holding soil in place, improve water quality, and provide habitat for unique and endangered plants and animals. Focusing on watershed management plans that target mauka protection actions (fencing, removal of hooved animals from important watershed forests, invasive weed control, etc.) that benefit native forests is essential if water lessees are going to have a reliable long-term supply of fresh water.

Additionally, the CIA and EIS identify impacts to the regional environment, taro farming, and freshwater resources within the License Area based public documentation and consultation with the community as presented in Section 4.6 of the Draft EIS. Specifically, Section 4.6 of the Draft EIS states:

4. *Participant Kyle Nakanelua is concerned with the act of diverting water. He explicitly states that “when those places dry up that adversely impacts the way of life, the cultural practice if you will” and it “adversely impacts the people’s way of life that live there.”*
 - a. *To support this claim, Mr. Nakanelua states that ‘ōpae was once prevalent in the streams that flowed through their family property named Lakini. He relates that when he began to regularly clean the property his grandmother would still catch ‘ōpae. He adds that today there is no ‘ōpae but there are prawns. When CSH asked if ‘ōpae was being overpicked, he replied “no” because “we were the only one there.” He also does not think the introduction of prawns is to blame but believes “that the flow of water is impactful” and has seen the water decline since 1989.*
5. *A 2014 declaration provided by Dan Clark from Ke‘anae stated he needs cool, fast running water for optimal kalo production. Due to low stream flow results, there has been an increase in disease to his kalo, which decreases production.*
6. *Jonah Jacintho states in his 2014 declaration that due to a lack of stream flow, fish populations have decreased therefore he cannot fish as much. To increase the population of ocean fish, fresh water is integral for spawning and nutrients. He also added that more water in stream beds would also increase ‘o‘opu, prawn, and hīhīwai populations.*

Section 4.6 of the EIS summarizes the findings of the CIA as follows:

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Based on information gathered from the cultural and historical background, and the community consultation, significant cultural resources were identified within the License Area, as well as outside of the License Area. It should be acknowledged that although some of the impacted cultural resources exist outside of the License Area, what takes place within the License Area directly affects these cultural practices and resources. At present, there is documentation and testimony indicating traditional and customary Native Hawaiian rights are currently being exercised within the License Area. Cultural resources, practices, and beliefs were identified as currently existing within the License Area. In addition, East Maui, which includes the License Area and beyond the License Area, maintains a rich subsistence and cultural history.

Additionally, the CIA and Section 4.6 of the Final EIS have been updated to more specifically include identified impacts and associated mitigation measures related to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action based on community consultation as shown on pages 4-171 to 4-254 of the Final EIS.

Comment 6: Sufficient sustainable balance of resource for healthy stream life and native tenant uses.

If the BLNR is intent on moving forward with this lease process they need to ensure that there is enough water left in all streams to sustain a healthy balance of aquatic habitat for indigenous stream life, our nearshore fisheries, kalo farmers and native tenant rights.

Response 6: We acknowledge your comments. As discussed in Section 1.3.4 of the Draft EIS, the requirements under the Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O) significantly reduces the amount of water that can be diverted for offstream uses relative to the capacity and use of the EMI Aqueduct System from when sugar was being cultivated. Ten streams were ordered to have no diversions at all (one of which, Waiokamilo, had stream flow fully restored in 2007) (referred to as “Fully Restored Streams” in Figure 1-3), five were required to return 64% of the median base flow (BFQ50) in the stream at all times (referred to as “Habitat Streams” in Figure 1-3), and seven were required to have 20% of BFQ50 in the stream at all times (referred to as “Connectivity Streams” in Figure 1-3). While the CWRM D&O did not set IIFS for 12 streams within the License Area that are diverted by the EMI Aqueduct System because those streams were not included in the petitions filed by NHLC on behalf of Nā Moku, the CWRM D&O did take those streams into account. CWRM D&O at ii.

However, the EIS does not rely solely on the findings and conclusions in the CWRM D&O. Appendix A and Section 4.2.1 of the Draft EIS presented the HSHEP model which was used to quantify the impacts of flow restoration on native stream animal habitat to determine an

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appropriate balance between instream and off stream water uses. Due to an increase in streamflow under the Proposed Action when compared to historical diversion rates, native stream habitats are anticipated to have an increase in habitat units (HU). However, these HU will slightly decrease from current conditions as more water is gradually diverted as the Mahi Pono farm plan develops to full build-out as outlined in Section 4.2.1 of the EIS. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as follows:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed after compliance with the ~~under the~~ CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 36.1% ~~40%~~ from the Natural Flow Condition (no diversion) scenario condition, but is increased by approximately more than 13.8% ~~10%~~ over the Full Diversion scenario (comparable to historical sugar operations) condition. In other words, 63.9% ~~60%~~ of the total HU remains within the License Area under the Proposed Action. This ranges from 96.7% of the HU in the Full flow Restoration streams to 15% remaining HU in the No Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

As discussed in Section 2.1.4 of the EIS, as of the date of the DEIS, the EMI Aqueduct System was only diverting approximately 20 mgd; more recently diversions have been up to approximately 26 mgd. These conditions are comparable to the No Action scenario discussed within Section 3.4.3 of the EIS where approximately 79.8% of the total HU remains in the License Area. In other words, the Proposed Action would reduce total HU as compared to existing conditions by approximately 15.9%. However, this reduction would occur over time as not all of the available surface water under the Proposed Action would be

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needed, and thus diverted immediately. Rather, the amount of water diverted at any given time will be only what is needed to meet the needs of the MDWS and of Mahi Pono's agricultural operations in Central Maui. Moreover, the CWRM D&O requires EMI to report on changes in stream diversions and ditch settings as irrigation requirements increase. EMI also maintains a system of optical encoders with float tape and data loggers within the EMI Aqueduct System. The information obtained is reported to CWRM on a monthly basis.

In summary, ~~The~~ the HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural ~~Flow~~ (undiverted) ~~Condition~~ conditions. However, in making decisions about instream flows, the CWRM must weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses. It is also its duty to establish IIFS that protect instream values to the extent practicable and to protect the public interest. The public interest includes not only protecting instream values but also preserving agricultural lands and assuring adequate water supplies for Maui.

As it relates to nearshore fisheries, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams

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(Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83 of the Final EIS.

As it relates to kalo farmers, please note that the CWRM D&O addressed the needs for kalo farming for the vast majority of streams that are diverted and proposed for diversion under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS, including within the Huelo area. It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation.

However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-

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valley characteristics of major taro growing areas, with many streams flowing through gulches as noted in Appendix I and Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Regarding rights to native tenants, the Hawai‘i Supreme Court has determined that those rights consist of the rights to the use of water “appurtenant” to and utilized by certain parcels of land at the time of their original conversion into fee simple land, when title was confirmed by the Land Commission Award and title conveyed by the issuance of a Royal Patent. *Reppun v. Board of Water Supply*, 65 Hawai‘i 531, 551; 656 P. 2d 57, 71 (1982).

The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” See CWRM D&O Finding of Fact (FOF) 54. Moreover, the prior water licenses issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “The State reserves the right...to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights...as well as other statutorily or judicially recognized interests relating to the right to withdraw water. . . .” It is expected that the lessee under the Water Lease would be subject to similar requirements and would therefore not impair the "water rights" of "Kuleana farmers."

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With regard to the East Maui streams in the License Area covered by the CWRM D&O, the uses of water by those who registered diversions claiming “appurtenant”, or “kuleana” rights were analyzed in detail separately with regard to each stream. The Proposed Action assessed under this EIS contemplates a Water Lease that would be in full compliance with the limitations set forth under the CWRM D&O.

Comment 7: *This cannot be done if there is no real-time method of monitoring in-stream flows. Setting in-stream flow standards mean nothing if they are not followed, enforced and adequately consistently measured and this has been the problem for Maui County to date.*

Response 7: Please note that the IIFS required under the CWRM D&O is a separate process from the Water Lease process, as discussed in Section 1.3.3 of the Draft EIS. Under this process, the CWRM ensures/monitors that instream flow standards are being met.

As required by the CWRM D&O, EMI submitted a report to the CWRM one year following the date of the issuance of the D&O that outlined and discussed:

1. Modifications to diversions to meet the amended IIFS.
2. Water deliveries at Honopou Stream and Māliko Gulch, and any changes EMI ascribes to the amended IIFS.
3. Changes in stream diversions and ditch settings as Mahi Pono’s irrigation requirements increase.

In addition, the requirements of the current East Maui revocable water permits specify that quarterly reports to the BLNR are required. These reports are mandated to include a statement of compliance with the 2018 IIFS. Since the CWRM D&O was issued, EMI has been working closely with the CWRM staff on the implementation of the ordered IIFS. The IIFS are being met for all License Area streams. It is expected, and the EIS takes into account, that compliance with the IIFS requirements under the CWRM D&O will also be required under the Proposed Action.

Comment 8: *Riding the line (as proposed) between the amount of water CWRM’s D&O requires for full stream restoration for 10 streams plus partial flow restoration to 12 additional streams in the subject area and requesting to use what remains leaves no “wiggle room” for any unknown factors.*

Response 8: Please note that your comment is unclear. However, the environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS. The terms of the Water Lease are at the discretion of the BLNR including how much water can be diverted under the proposed Water Lease. Moreover, unknown factors are taken into consideration under HRS § 171-58(d), which provides in relevant part:

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Subject to the applicable provisions of section 171-37(3), the board, at any time during the term of the lease of water rights, may withdraw from waters leased from the State and from sources privately owned by the lessee so much water as it may deem necessary to (1) preserve human life and (2) preserve animal life, in that order of priority; and that from waters leased from the State the board, at any time during the term of the lease of water rights, may also withdraw so much water as it may deem necessary to preserve crops; provided that payment for the waters shall be made in the same manner as provided in this section.

Comment 9: *The impact of diverting water from Nāhiku is a severe impact to kalo farmers and should be stricken from the lease proposal.*

Response 9: The three streams within the Nāhiku region that have been diverted by the EMI Aqueduct System were all ordered for restoration under the CWRM D&O. Makapipi stream was ordered for full restoration and Hanawi and Kapaula streams were ordered for connectivity restoration. As previously mentioned, any water lease will have to be in compliance with the CWRM D&O.

Comment 10: A record of questionable past management.

Based on Commission on Water Resource Management ("CWRM"), A&B and EMI's historical lack of management in East Maui and the ongoing water wars, I do not think a 30-year lease is appropriate. These entities need to be held accountable for meeting certain requirements in a timely manner and improving and maintaining the system that they want to continue to use. Based on past performance by all entities, any lease issued needs to be revisited every one or two years to ensure that the lessee is in fact using the water for their farming operations and that their agricultural plans are moving forward and they are using all of the water they are requesting and that they are taking steps to maintain the system so that water is not being wasted.

Response 10: We acknowledge your comments relating to questionable management. Regarding your comment about a 30-year lease not being appropriate, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability." The Alternative Lease Duration alternative is described in Section 3.2.2.1 of the EIS and fully analyzed across the spectrum of environmental criteria in Section 3.4 of the EIS. In addition, a summary table comparing the various alternatives, as well as the No Action alternative, has been added as Table 3-2 to Section 3.5 of the Final EIS as pages 3-49 to 3-80." The Agricultural and Related Economic Impacts report provided as

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Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Related to the Alternative Lease Duration alternative, the following revisions have been made to Section 3.2.2.1 of the Final EIS at page 3-21

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability. Additionally, the infrastructure and land management necessary to support a diversified agriculture farm plan is different from what was necessary for sugar cane, and thus requires significant infrastructure improvements and land

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preparation. Given the considerable time and expense it takes to develop a diversified farm plan such as the one Mahi Pono is proposing, a shorter term water lease would likely result in a reduced range of crops, and the reduced cultivation of designated Important Agricultural Lands (IAL) in Central Maui. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

Regarding your comment that the Water Lease issued should be revisited every one to two years, please note that the terms of the Water Lease are at the discretion of the BLNR. Should the BLNR make this a requirement of the Water Lease, and should the Applicant find the terms of the Water Lease acceptable, the Applicant will comply with all conditions of the Water Lease. Moreover, as noted in Response #7 above, the requirements of the current East Maui revocable water permits specify that quarterly reports to the BLNR are required. These reports are mandated to include a statement of compliance with the IIFS. Moreover, in response to your concern about using the water for farming operations, it is expected that the Water Lease, if issued, will be issued conditioned upon identified and approved uses of the water, and the lessee would have to comply with those requirements in order to retain its rights under the Water Lease. Your comment about the maintenance of the system is unclear. Regarding the EMI Aqueduct System, it is highly efficient. On the whole, the EMI Aqueduct System does not lose water over the entire length of the system, up to its terminus at Kamole Weir as confirmed by a 2012 United States Geological Survey (USGS) study, entitled "Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawai'i", that was prepared in cooperation with the CWRM and cited in the 2018 CWRM D&O. It is not until the EMI Aqueduct System transitions into the Central Maui Field Irrigation System used in the Central Maui agricultural fields that there starts to be losses due to seepage because its agricultural ditches and reservoirs are open and are not lined. Please note that this clarification has been made throughout the Final EIS at pages 2-11, 2-27, 3-12, and 4-76

EMI staff does conduct routine maintenance and repair on the EMI Aqueduct System to ensure its efficiency as shown at page 2-7 of the Final EIS, under the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment.

Regarding the Central Maui Field Irrigation System, Mahi Pono's plans for improving irrigation efficiency is stated throughout Chapter 5 of the Draft EIS. Mahi Pono expects to invest over \$20 million to increase the efficiency of its private Central Maui Field Irrigation System in Central Maui, as described in more detail in Response # 10 above, and in Section 2.1.4 at page 2-25 of the Final EIS.

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Comment 11: *Hawaii Revised Statutes requires lessees of water rights and the Department of Land and Natural Resources (“DLNR”) to jointly develop and implement a watershed management plan. For all the years A&B and EMI have been taking water from East Maui, under the oversight of CWRM and DLNR, only now we are talking about developing and implementing a Watershed Management Plan?*

Response 11: As discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. Since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS at pages 2-2 to 2-4 has been updated to reflect this new information about the contents of an acceptable watershed management plan. The minimum content requirements under the category of "Goals" are described in detail in Section 2.1.4 as shown on pages 2-2 to 2-4.

In response to your suggestion that there has been a delay in addressing watershed management, please note that as discussed in Section 2.1 of the Draft EIS, A&B was a founding member of the East Maui Watershed Partnership (EMWP), which was the first watershed partnership in the State of Hawai‘i and which served as a model for other watershed partnerships throughout the State. In reviewing existing watershed management plans in general, however, DLNR has recently determined that some of the existing watershed plans are not always directly correlated to the water lease area and some plans are old and outdated. In certain places, new threats to watershed health are not addressed in existing watershed plans. Additionally, DLNR determined that estimated budgets in such existing plans may not reflect the current cost of management if the plan is over 5 years old. As such, DLNR will work with proposed water lessees to determine if any existing plan meets the minimum content requirements and sufficiently addresses the protection of watershed forests and freshwater resources in the License Area. If it does not, DLNR will work with the lessee to determine the specific actions needed and jointly develop a new plan or update the existing plan as noted above. It should be noted that the existence of a watershed management plan does not absolve a water lessees’ duty to help with the implementation of management actions. A lessee must provide DLNR proof that it is already contributing to the protection of the watershed, and membership in a Watershed Partnership may not fulfill the requirement of implementation.

Comment 12: *For over at least a decade, (and maybe more) the County of Maui has pro-actively appropriated hundreds of thousands of dollars for watershed protection in the East*

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Maui area, with no law mandating us to fund this effort. But still we are only able to manage the Miconia (rather than eradicate), we are all holding our breath over here hoping we don't experience the devastation from ROD that Hawaii island has experienced. Invasive species are a reality, and there doesn't seem to be enough attention and "wiggle room" to respond in the event of a catastrophic environmental change to our forest and watershed.

Response 12: We acknowledge your comment that the County of Maui has actively appropriated money for watershed protection in East Maui. Regarding your comments about invasive species, it is noted in Appendix C that that low-elevation portions of the License Area are already highly impacted by invasive plants. However, it is noted in Appendix C that high-elevation portions of the License Area are predominately dominated by native species and is very likely to contain habitat for several endangered or threatened species. Impacts related to flora and fauna as a result of the Proposed Action are discussed in Section 4.4 of the EIS. Please note that Section 4.4.1 and Section 4.4.2 have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS, including those related to rapid 'ōhi'a death, as shown on page 4-122 to 4-123

Comment 13: *New available technologies with potential to extend the water cycle.*

It is hard to predict what the landscape, water availability and demand will be 30 years from now, it is hard to predict the technologies that will be available so far in the future especially with all of the uncertainties we face with climate change and sea level rise. We do need to share the water so that first and foremost the water needs of the people of East Maui are taken care of and then our upcountry existing residents and then our agriculture operations, however there are things that we need to do to address our wastewater situation in the tsunami inundation zone with sea level rise presenting real threats.

Response 13: We acknowledge your comments. As noted in Response #5 above, the EIS includes the most recent information regarding climate change within its analysis. However, the exact nature of how the climate will change and impacts from any changes is unknown. As research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies for climatic changes.

Relating to your comments about sharing water and ensuring the water needs of East Maui and Upcountry residents are met, please note that this is consistent with the goals and objectives of the Proposed Action. See EIS Section 1.2, which provides:

In general, the objectives of the issuance of the Proposed Action (Water Lease) are:

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- *Preserve and maintain the EMI Aqueduct System, including its access roads*
- *Continue to meet domestic and agricultural water demands in Upcountry Maui*
- *Continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses)*
- *Continue to serve community water demands in Nāhiku*

Regarding your comment about “*our wastewater situation in the tsunami inundation zone with sea level rise presenting real threats,*” please note that this is not within the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued “*right, privilege, and authority to enter and go upon*” the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the “*purpose of developing, diverting, transporting, and using government owned waters*” through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS. However, Section 3.1.1.2 (Reclaimed Water) within Chapter 3 of the EIS acknowledges concerns raised about the Wailuku-Kahului Wastewater Reclamation Facility (WWRF) being located in a hazardous and exposed location, at the front of a tsunami flood zone and a 3.2 feet sea level rise exposure area, rendering it a vulnerable public facility.

Comment 14: *A&B has dedicated lands to the county for wastewater and the technology is available to reclaim the water to standards which agriculture can use. The county needs to start building wastewater treatment facilities more inland that do not inject effluent into the ocean. That is a valuable resource, we need to phase out the use of the Kahului wastewater treatment facility and build treatment facilities in the area of Mahi Pono lands thus making use of reclaimed waters for agriculture and alleviating the taking of East Maui waters. This can be done prior to 30 years and thus the lease should not be for that long.*

Response 14: We acknowledge your comments. However, please note that the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued “*right, privilege, and authority to enter and go upon*” the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the “*purpose of developing, diverting, transporting, and using government owned waters*” through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Planning for new County WWTPs is beyond the scope of this EIS for a water lease. However, in response to your comment about Mahi Pono potentially making use of reclaimed water for

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agricultural purposes, this scenario was considered within Chapter 3 of the EIS. Specifically, as it relates to recycled water for agricultural use, the availability of the use of reclaimed water from the Wailuku-Kahului Wastewater Reuse Facility (WWRF) is discussed in Draft EIS Section 3.1.1.2 (Reclaimed Water), which provides an analysis of the feasibility of the use of reclaimed water from the Wailuku-Kahului WWRF to irrigate the Central Maui fields. As discussed, the recycled water alternative using existing R-2 water from the Kahului WWRF could be considered an alternative as supplemental source. However, R-2 water has limited useability on crops. County of Maui Department of Environmental Management (DEM) does not intend to send this R-2 water to the Central Maui agricultural fields. Further consideration of this alternative has been included in Chapter 3 of the Final EIS, which has also been supplemented with a discussion about the potential new reuse/effluent disposal facility in Central Maui to be located south-west of the Kahului WWRF that is being considered by the County Department of Environmental Management. See Final EIS pages 3-9 to 3-11.

Comment 15: No established track record for resource recipient Mahi-Pono.

The public is still waiting and watching to see what will be done with the forty one thousand acres that they knew to be HC&S. Granting any type of lengthy license is russian roulette. They have no social equity in our community, they have no agricultural equity, and whether or not A&B, EMI or Mahi Pono's name is on the license, its still a risk because the primary and missing element that may have justified the takings in the past is no longer present — and that's the plantation as we knew it.

Response 15: With regards to your comment about what will be done with 41,000 acres, please note that this is incorrect. For the purposes of the EIS, the term Central Maui, for the purposes of projecting full implementation of the Proposed Action and related diversified agricultural plan, refers to the approximately 30,000 acres of agricultural land that had been cultivated with sugarcane for over a century utilizing water from the EMI Aqueduct System. Geographically, what is referred to as Central Maui encompasses approximately 36,000 acres, but approximately 6,000 acres is comprised of uncultivated areas, including roads, gulches, and patches of uncultivated land. See Chapter 4 at page 4-1 and the Executive Summary at pages iii to iv.

You are correct that the old style of plantation farming and monocrop farming is no longer present. Instead, consistent with the State mandate for Important Agricultural Lands, and the desire to increase food self-sufficiency, Mahi Pono is pursuing diversified agriculture. The Mahi Pono farm plan is identified in the EIS as a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community. This is explained in Section 2.1.4 of the EIS as follows:

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Mahi Pono's farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation. All of these things must be considered when developing an evolving and feasible diversified agricultural plan for Central Maui.

Another factor in developing the farm plan is to be sensitive to the existing local farming community. Mahi Pono does not want to displace local farmers by planting competing crops or artificially accelerating the ramp-up of operations, both of which could have the potential to drive local farmers out of the market. Mahi Pono's goals for its diversified farm plan will be guided by its core principles of using reasonable and environmentally responsible "best management practices", planting non-GMO crops, and growing food for local consumption.

Mahi Pono's farm plan and its impacts are based on a production timeline of full operations by 2030. It is explained in Section 2.1.5 of the EIS that it will take approximately 10 years for Mahi Pono and its lessees to remove volunteer sugarcane and weeds, amend soils, install field improvements, build warehouses and other structures accessory to its agriculture use, and plant crops. The predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. At full operations, the Mahi Pono farm plan is anticipated to consist of the following as presented in Section 2.1.4 of the Draft EIS:

The Mahi Pono farm plan assumes the following:

- *The total surface water available for use after system losses (approximately 22%) is estimated to be approximately 65.88 mgd.*
- *Surface water can be supplemented by a brackish groundwater amount equal to 20 percent of surface water. Taking into account the CWRM D&O, it is estimated that there could be up to 16.47 mgd of brackish groundwater used in the Central Maui agricultural fields. (Plasch, 2019)*
- *Under the CWRM D&O, the total water available for use on the Central Maui agricultural fields after system losses is approximately 82.35 mgd*
- *That total amount of water will be delivered to approximately 30,000 acres. Of those 30,000 acres:*
 - *Approximately 15,950 acres would be used for farming, including 12,850 acres for orchard crops and 3,100 acres for other crops.*

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- *Approximately 13,800 acres would be used for pasture, of which about 4,700 acres would be irrigated.*
- *Approximately 250 acres would be used for green energy, such as a solar farm.*

Because there is insufficient surface water to support the entire farm plan, brackish groundwater will also be used. . .

This farm plan would consist of the following:

- *Approximately 20,650 acres of irrigated farm land, including 12,850 of orchard crops, 600 acres of tropical fruit, 1,200 acres of row and annual crops, in addition to a community garden and limited non-GMO energy crops.*
- *Approximately 13,800 acres of cattle pasture, comprised of 4,700 acres of irrigated pasture, and 9,100 acres of unirrigated pasture. This should fit the proposed model of grass-finishing on irrigated pasture. The unirrigated acreage is less than 10,000 acres, which helps ensure that that the entire area devoted to unirrigated pasture will remain productive.*

However, please note that the water use figures in Table 2-1 of the Draft EIS (Table 2-2 of the Final EIS) that is within Section 2.1.4 of the Final EIS at page 2-29 has been refined based on data collected to date. Section 2.1.4 of the Final EIS has also been updated with current and near-term expected water use for year 2021 as shown on pages 2-30 and 2-32.

It important to note that as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

Regarding your comment about Mahi Pono having no social and agricultural equity is unclear. However, Mahi Pono is an agricultural company and the main source of its revenue is and will be from agriculture and its agricultural activities as discussed in detail in Section 4.7.4 of the EIS. Specifically, Section 4.7.4 of the Draft EIS states:

At full development, the Mahi Pono farm plan would result in a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops. Annual sales are expected to reach about \$155.9 million. The pastures would support a cattle herd of about 7,300 cow-and-calf animal units

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(au), produce over 4,300 calves per year, and generate revenues of about \$4.8 million per year. Thus, total farm sales would be about \$160.7 million per year, of which an estimated \$104.4 million (65%) would be Hawai'i sales and \$56.2 million export sales (35%).

Based on recently built or approved solar farms, the solar farm would generate about 82,100 MW of electricity per year, with revenues of about \$8.2 million per year paid by MECO to the solar-farm operator. Combined farm and energy revenues would reach about \$168.9 million per year in direct sales (exceeding the 2006 revenues from sugar production of \$101 million, and the \$116 million average for the 2008-to-2013 period). Purchases of goods and services by farmers and the families of employees would generate indirect sales and, in turn, these suppliers would generate more indirect sales by their purchase of goods and services. The indirect sales are estimated at about \$160.7 million per year. Total direct-plus-indirect sales would be about \$329.5 million, of which about \$273.8 million would be on Maui and about \$56.2 million on O`ahu.

About \$24.9 million of consumption expenditures would be subject to the excise tax on final sales, and about \$248.2 million subject to the excise tax on intermediate sales. Rental income from leasing land to other farmers and to an energy company would be about \$1 million per year. Profits from farm operations, energy operations, and indirect sales would be about \$33 million.

Mahi Pono has individually met with several members of the Maui County Council. Mahi Pono has also had various meetings with community groups such as Go Maui, Maui Tomorrow, Mā'alaea Community Association, Pukalani Community Association, and the Alliance of Maui Community Associations regarding the Mahi Pono farm plan and use of water from East Maui streams, and conducted farm tours with members of the community.

Mahi Pono is also working with the County of Maui Department of Water Supply (MDWS), as well as the County Corporation Counsel and Mayor's offices, to help coordinate continued deliveries of surface water to the County's Kamole-Weir Water Treatment Plant (WTP) and the Kula Agricultural Park (KAP).

Comment 16: *Maui County, BLNR, CWRM, and the State of Hawaii should take this transition period very slowly and with an abundance of caution. Start with short term leases, that are assessed annually. As Mahi Pono's credibility builds, so may the length of the leases, provided climate change effects cooperate in a favorable way.*

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Response 16: We acknowledge your comments. Currently, the water use is being authorized through revocable permits that the BLNR must re-authorize every year. The express purpose of the EIS, as ordered by the BLNR, is to assess the environmental impacts of a proposed long-term water lease. The details of this are provided in Section 1.4 of the EIS. As discussed in Response #10 above, under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered. Given the considerable time and expense it takes to develop a diversified farm plan such as the one Mahi Pono is proposing, a shorter term water lease would likely result in a reduced range of crops, and the reduced cultivation of Important Agricultural Lands (IAL) in Central Maui. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation.

Comment 17: *Mahi Pono has no experience of managing a Hawaii public trust resource and no viable long-term farm plan that has been presented to the public prior to what is in this DEIS to validate the public allowing the control of their resource be tied up in a long-term license to private for-profit parties.*

Response 17: Please note that Mahi Pono has been using public trust resources since they purchased A&B's former sugarcane land in Central Maui in December 2018 and has been expanding their agricultural operations since that time. Please note that Section 2.1.4 of the Final EIS has been revised to reflect Mahi Pono's current and near-term expected water use as shown on pages 2-30 and 2-32.

It important to note that as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

Moreover, as noted in Response #3 above, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. As previously mentioned, a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action as shown on pages 1-25 to 1-27.

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Comment 18: *In closing, I again respectfully request that the review period be extended to allow for more in-depth analysis and comment by the stakeholders i.e. the public.*

Response 18: We acknowledge your comments. As discussed in Response #1 above, the period for public comment associated with the Draft EIS is defined by statute, as set forth under HRS § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.



United States Department of the Interior



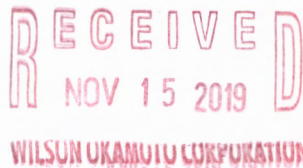
FISH AND WILDLIFE SERVICE

Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawaii 96850

In Reply Refer To:
01EPIF00-2017-TA-0059

November 6, 2019

Mr. Earl Matsukawa, Project Manager
Wilson Okamoto Corporation
1907 South Beretania Street, Suite 400
Honolulu, Hawaii 96826



Subject: Technical Assistance for the Draft Environmental Impact Statement for a Proposed Water Lease for the Nahiku, Keanae, Honomanu and Huelo License Areas, Maui

The U.S. Fish and Wildlife Service (Service) is providing this letter in response to a request for comment on the two-volume Draft Environmental Impact Statement (DEIS) for a Proposed Lease (Water Lease) for the Nahiku, Keanae, Honomanu and Huelo license areas of Maui, Hawaii, pursuant to Hawaii Revised Statutes Chapter 343 (HRS 343). This letter has been prepared under the authority of and in accordance with provisions of the Endangered Species Act (ESA) of 1973 [16 U.S.C. 1531 *et seq.*; 87 Stat. 884], National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.*; 83 Stat. 852], as amended, and other authorities mandating the Service's review of projects and provision of technical assistance to conserve trust resources.

Proposed Action

The Proposed Action involves diversion of flows from a set of perennial streams on the north flank of the Haleakala volcano on the eastern section of Maui island, Hawaii (referred to subsequently as "East Maui") to agricultural fields in central Maui. These stream flows originate from four separate license areas running from east to west along the mountain as follows: Nahiku, with an area of approximately 10,111 acres; Keanae, with an area of approximately 10,768 acres; Honomanu, with an area of approximately 3,381 acres; and Huelo, with an area of approximately 8,753 acres. In aggregate, these license areas comprise approximately 33,013 acres, or 51.6 square miles, much of which is covered in native rain forest vegetation and inhabited by hundreds of native species, many of them endemic to the island of Maui, and some listed as threatened or endangered under the ESA.

The diverted stream flows will be captured by the existing East Maui Irrigation Aqueduct System (referred to as the "EMI system"), which consists of 388 separate intake structures, 24 miles of

ditches, 50 miles of tunnels, 12 inverted siphons, and numerous other small intakes, pipes and flumes. This system, which has operated in various forms since 1878, is now jointly owned by the East Maui Irrigation Company, Limited (EMI), a wholly owned subsidiary of Alexander & Baldwin, Inc. (A&B), and Mahi Pono LLC (Mahi Pono), a farming venture between Pomona Farming, LLC, a California-based agricultural group, and the Public Sector Pension Investment Board (PSP Investments), a Canadian pension management firm. For the past 93 years, the EMI system has represented a highly integrated water catchment system that, until recently, diverted the majority of stream runoff from the north side of Haleakala to the agricultural lands of central Maui. At this time, the EMI system represents the largest privately owned water company in the United States, and during the days of plantation operation its Wailoa Canal had a higher median flow than any natural river in the state of Hawaii.

The EMI system is currently authorized to divert up to 80 million gallons of water per day (mgd) based on a one-year revocable permit approved by the State of Hawaii's Board of Land and Natural Resources (BLNR). The Proposed Action seeks the issuance of a single long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. These users include: (1) the County of Maui for its domestic water supply needs in both Upcountry Maui and at Nahiku near the east end of the EMI system; (2) the Department of Hawaiian Home Lands for a future water reservation sufficient to support current and future homestead needs as per the provisions of Section 221 of the Hawaiian Homes Commission Act; and (3) Mahi Pono, which seeks to pursue diversified agriculture on former Hawaiian Commercial & Sugar Company (HC&S) sugarcane plantation lands it has recent purchased from A&B. As reiterated at multiple points throughout the DEIS, the underlying purpose of the Proposed Action is to preserve and maintain the EMI water diversion system, including its access roads, and to continue to supply water for domestic and agricultural uses on Maui. In addition, the proposed action will involve access to State of Hawaii lands in order to maintain and repair existing roads and trails used as part of the EMI system.

While the DEIS was in preparation, the State of Hawaii's Commission on Water Resource Management issued a Decision and Order (D&O) on June 20, 2018, establishing Interim Instream Flow Standards for 27 East Maui streams that had been subject to IIFS Petitions since May 2001. The Proposed Action seeks to divert the maximum allowable amount of water specified for off-stream uses under the D&O from the four state license areas. This equates to approximately 88 mgd at Honopou Stream (the most westerly catchment on State land), and 92 mgd at Maliko Gulch (where the system transitions from diversion to agricultural field irrigation), with the additional water gained between the two reference points coming from private lands owned by affiliates of EMI. The diverted waters will be used to irrigate 26,600 acres of agricultural lands in central Maui owned by Mahi Pono and formerly devoted to sugarcane plantation use through its subsidiary Hawaiian Commercial & Sugar (HC&S), as well as to maintain current service to the Maui County Department of Water Supply (which also

supplies the Kula Agricultural Park). The proposed action will be privately financed, and does not propose or require the use of any public funds to cover the estimated \$2.5 million per year in EMI system operating and maintenance costs.

The Service notes that the amount of water diversion in the Proposed Action represents approximately 59 percent of the 157 mgd being delivered by the system past Maliko Gulch in 2006 when the HC&S sugarcane plantation was still in operation, equating to a 41% reduction over these recent rates of diversion. The amount of water diverted under the Proposed Action also represents only 20 percent of the full potential diversion capacity of the entire EMI system when it was formerly intact, and prior to inactivation of at least 70 points of diversion in compliance with the CWRM D&O. The Service commends all parties involved in having taken substantive steps to re-balance instream versus offstream uses in this sector.

As a condition of this lease application, Alexander & Baldwin (A&B) was instructed by the BLNR on July 8, 2016 to prepare an EIS pursuant to HRS Chapter 343. The Service's comments are in response to the DEIS, which was submitted to the State of Hawaii's Office of Environmental Quality Control (OEQC) on September 9, 2019, with request that a notice be published by OEQC requesting public comment.

Potential Impacts of the Proposed Action to ESA-listed Species

The long history of stream diversions by the EMI system on East Maui has created a wide array of impacts to trust resources, including both the native stream biota, other species which inhabit the adjacent upland forests, and nearshore marine ecosystems that rely on streams for nutrient inputs. Several native stream-associated insect species occurring on East Maui water lease areas are now listed under the Endangered Species Act, specifically the damselflies *Megalagrion pacificum*, *Megalagrion nesiotetes*, and *Megalagrion xanthomelas*, all three listed as endangered under the ESA. *Megalagrion pacificum* breeds in stream pools and side channels, with adults patrolling the margins of the stream corridor, and therefore suffers direct impacts from loss of habitat linked to diminished stream flows. The breeding habitats of *Megalagrion nesiotetes* are not known, but the adults also utilize the stream corridor, and are not present in areas where diversions have created dry streambeds in the place of a formerly flowing channel. *Megalagrion xanthomelas* breeds in pools along stream terminal reaches, and although the species is not currently documented from windward East Maui, has the potential to occur there. Higher rates of diversion will therefore lead to higher rates of direct impact to all of these listed species.

In addition, the ditch system also provides a lateral conduit across drainage divides for aquatic invasive species (AIS), such as topminnows, which can use the aquaduct to colonize upper stream reaches that they would otherwise not be able to access. Such species have been shown to significantly impact populations of ESA-listed native *Megalagrion* damselflies, and thus inhibit their recovery. The Service suggests that the FEIS devote discussion to how such migratory pathways for AIS could be interrupted. This could be as simple as putting small vertical drops in the ditch profile at appropriate and practical intervals, such most AIS cannot pass such obstacles

when moving up-current. Once such species are prevented from continuously recolonizing such reaches, the existing populations may eventually be flushed out over time by strong flood events. Eliminating this dispersal pathway would thus aid in improving the biological integrity of restored habitat, and promote the recovery of ESA-listed damselfly species. The Service's Hawaii Fish Habitat Partnership program is available to provide technical expertise on such potential modifications to the EMI system.

In addition to the listed damselflies, based on information provided in the DEIS and pertinent information in our files, including data compiled by the Hawaii Biodiversity and Mapping Project, there are 10 listed birds, 2 listed reptiles, 1 listed mammal, 7 listed insects, and 43 listed plants that may occur or have final designated Critical Habitat within or near the vicinity of the license areas proposed for diversion. These listed species are as follows:

Birds

Band-rumped storm-petrel (<i>Oceanodroma castro</i>)	Endangered
Akohekohe (<i>Palmeria dolei</i>)	Endangered, Critical habitat present
Hawaiian coot (<i>Fulica alai</i>)	Endangered
Hawaiian duck (<i>Anas wyvilliana</i>)	Endangered
Hawaiian goose or nene (<i>Branta sandvicensis</i>)	Endangered
Hawaiian petrel (<i>Pterodroma sandwichensis</i>)	Endangered
Hawaiian stilt (<i>Himantopus mexicanus knudseni</i>)	Endangered
Iiwi (<i>Drepanis coccinea</i>)	Threatened
Kiwikiu (<i>Pseudonestor xanthophrys</i>)	Endangered, Critical habitat present
Newell's shearwater (<i>Puffinus newelli</i>)	Threatened

Reptiles

Green sea turtle (<i>Chelonia mydas</i>)	Endangered
Hawksbill sea turtle (<i>Eretmochelys imbricata</i>)	Endangered

Mammals

Hawaiian hoary bat (<i>Lasiurus cinereus semotus</i>)	Endangered
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Insects

Blackburn's sphinx moth (<i>Manduca blackburni</i>)	Endangered
Flying earwig Hawaiian damselfly (<i>Megalagrion nesiotes</i>)	Endangered
Orangeblack Hawaiian damselfly (<i>Megalagrion xanthomelas</i>)	Endangered
Pacific Hawaiian damselfly (<i>Megalagrion pacificum</i>)	Endangered
Yellow-faced bee (<i>Hylaeus anthracinus</i>)	Endangered
Yellow-faced bee (<i>Hylaeus assimulans</i>)	Endangered
Yellow-faced bee (<i>Hylaeus longiceps</i>)	Endangered

<u>Plants</u>	<u>Status</u>	<u>Critical Habitat Unit</u>
<i>Adenophorus periens</i>	Endangered	Montane Wet 2
<i>Asplenium peruvianum</i> var. <i>insulare</i>	Endangered	Montane Wet 2, Montane Mesic 1
<i>Bidens campylotheca</i> ssp. <i>pentamera</i>	Endangered	Montane Wet 2, Montane Mesic 1
<i>Bidens campylotheca</i> ssp. <i>waihoiensis</i>	Endangered	Lowland Wet 1, Montane Wet 2
<i>Calamagrostis expansa</i>	<u>Endangered</u>	None
<i>Clermontia oblongifolia</i> ssp. <i>mauiensis</i>	<u>Endangered</u>	Lowland Wet 1, Montane Wet 2
<i>Clermontia peleana</i>	<u>Endangered</u>	Lowland Wet 1
<i>Clermontia samuelii</i>	Endangered	Lowland Wet 1, Montane Wet 2
<i>Cyanea asplenifolia</i>	Endangered	Lowland Wet 1
<i>Cyanea copelandii</i> ssp. <i>haleakalaensis</i>	Endangered	Lowland Wet 1, Montane Wet 2
<i>Cyanea duvalliorum</i>	Endangered	Lowland Wet 1, Montane Wet 1, Montane Wet 2
<i>Cyanea hamatiflora</i> ssp. <i>hamatiflora</i>	Endangered	Lowland Wet 1, Montane Wet 2
<i>Cyanea horrida</i>	Endangered	Montane Wet 2, Montane Wet 2
<i>Cyanea kunthiana</i>	Endangered	Lowland Wet 1, Montane Wet 2
<i>Cyanea maritae</i>	Endangered	Lowland Wet 1, Montane Wet 1
<i>Cyanea mceldowneyi</i>	Endangered	Lowland Wet 1, Montane Wet 1, Montane Wet 2
<i>Cyclosorus boydiae</i>	Endangered	None
<i>Cyperus pennatifolius</i>	Endangered	Coastal 4
<i>Cyrtandra ferripilosa</i>	Endangered	Montane Wet 2, Montane Mesic 1 Montane Wet 2, Montane Mesic 1
<i>Diplazium molokaiense</i>	Endangered	None
<i>Gardenia remyi</i>	Endangered	
<i>Geranium arboretum</i>	Endangered	Montane Mesic 1
<i>Geranium hanaense</i>	Endangered	Montane Wet 2
<i>Geranium multiflorum</i>	Endangered	Montane Wet 2, Montane Mesic 1
<i>Huperzia mannii</i>	Endangered	Lowland Wet 1, Montane Wet 1
<i>Joinvillea ascendens</i> ssp. <i>ascendens</i>	Endangered	None
<i>Ischaemum byrone</i>	Endangered	Coastal 3
<i>Melicope balloui</i>	Endangered	Lowland Wet 1, Montane Wet 1
<i>Melicope ovalis</i>	Endangered	Lowland Wet 1
<i>Microlepia strigosa</i> var. <i>mauiensis</i>	Endangered	None
<i>Mucuna sloanei</i> var. <i>persericea</i>		
<i>Ochrosia haleakalae</i>	Endangered	Lowland Wet 1

	Endangered	None
<i>Peperomia subpetiolata</i>	Endangered	Montane Wet 2
<i>Peucedanum sandwicense</i>	Threatened	Coastal 1
<i>Peperomia subpetiolata</i>	Endangered	Montane Wet 2
<i>Phyllostegia bracteata</i>	Endangered	Montane Wet 2, Montane Mesic 1 Lowland Wet 1, Montane Wet 2
<i>Phyllostegia haliakalae</i>	Endangered	Montane Wet 2, Montane Mesic 1
<i>Phyllostegia mannii</i>	Endangered	Montane Wet 1 Montane Wet 2
<i>Phyllostegia pilosa</i>	Endangered	None
<i>Platanthera holochila</i>	Endangered	
<i>Schiedea diffusa</i> ssp. <i>diffusa</i>	Endangered	
<i>Schiedea jacobii</i>	Endangered	Montane Wet 2
<i>Wikstroemia villosa</i>	Endangered	Lowland Wet 1, Montane Wet 2, Montane Mesic 1

Impacts to Listed Species in the Lease Areas

The Service therefore has a clear interest in addressing the amount of future water diversion proposed for East Maui, the license areas in which it will occur, and the impacts to native ecosystems and species that may result from the continued operation and maintenance of the EMI system. The native forest habitat becomes progressively more extensive and of higher ecological integrity as one moves eastward from the Huelo and Honomanu license areas and into the Keanae and Nahiku areas. The native species richness in the stream communities follows a similar west-to-east progression. Therefore, diversions from the Nahiku and Keanae license areas are likely to be of higher impact to ESA-listed species, and native Hawaiian plant and animal species in general, than are diversions from the Huelo and Honomanu areas.

Among the major threats to the survival in the wild of the three listed forest bird species (akohekohe, iwi, and kiwikiu) is mortality caused by avian malaria, which is vectored by the introduced mosquito *Culex quinquefasciatus*. This mosquito species breeds in stagnant pools free from fish in dewatered stream beds, and is by contrast uncommon along stream channels with continuous flow and healthy fish populations. By converting continuously flowing streams into nearly dry beds with scattered small pools, the EMI system's diversions have created corridors of habitat by which *Culex* mosquitoes can penetrate uphill more deeply into the native forest, and more readily reach susceptible native forest bird populations. This represents a significant, although indirect, impact of the proposed diversions to this set of listed species.

Impacts to Listed Species in Agricultural Areas

The DEIS encompasses the redevelopment of the fields in the central plain of Maui into diversified agriculture by Mahi Pono. The fallow fields and roadsides in this area contain known occurrences of the endangered Blackberry's sphinx moth and one of its key host plants, the non-native tree tobacco (*Nicotiana glauca*), is widespread in this habitat. The DEIS should include

avoidance and minimization measures to ensure no adverse impacts to this widespread species will occur as a result of the field redevelopment of long term operations of agriculture use.

Blackburn's Sphinx Moth:

We offer the following survey recommendations to assess whether the Blackburn's sphinx moth is present within an action area:

- A biologist familiar with the species should survey areas of proposed activities for Blackburn's sphinx moth and its larval host plants prior to work initiation.
- Surveys should be conducted during the wettest portion of the year (usually November-April or several weeks after a significant rain) and within 4-6 weeks prior to construction.
- Surveys should include searches for eggs, larvae, and signs of larval feeding (chewed stems, frass, or leaf damage).

If moths or the native aiea or tree tobacco over 3 feet tall are found during the survey, please contact the Service for additional guidance to avoid take.

If no Blackburn's sphinx moth, aiea, or tree tobacco are found during surveys, it is imperative that measures be taken to avoid attraction of Blackburn's sphinx moth to the project location and prohibit tree tobacco from entering the site. Tree tobacco can grow greater than 3 feet tall in approximately 6 weeks. If it grows over 3 feet, the plants may become a host plant for Blackburn's sphinx moth. We therefore recommend that you:

- Remove any tree tobacco less than 3 feet tall.
- Monitor the site every 4-6 weeks for new tree tobacco growth before, during and after the proposed ground-disturbing activity.
- Monitoring for tree tobacco can be completed by any staff, such as groundskeeper or regular maintenance crew, provided with picture placards of tree tobacco at different life stages.

Please note: Based on the size and the location of the agricultural operations proposed, we expect that Blackburn's sphinx moth occur throughout the area.

Hawaiian seabirds:

The DEIS also states that some new infrastructure will be associated with the redevelopment of these fields. Avoidance and minimization for seabirds should be incorporated into any development, particularly related to lighting, to avoid take of these listed taxa.

- Fully shield all outdoor lights so the bulb can only be seen from below bulb height and only use when necessary.
- Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.
- Avoid nighttime construction during the seabird fledging period, September 15 through December 15.

Hawaiian hoary bat:

The redevelopment of the agricultural fields into orchards may create breeding habitat for the endangered Hawaiian hoary bat, which is known to be attracted to orchards, mac-nut farms, and

similar tree-based agriculture for foraging and roosting. The Hawaiian hoary bat roosts in both exotic and native woody vegetation across all islands and will leave young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet (ft) or taller are cleared during the pupping season, there is a risk that young bats could inadvertently be harmed or killed since they are too young to fly or may not move away. Additionally, Hawaiian hoary bats forage for insects from as low as three feet to higher than 500 ft above the ground and can become entangled in barbed wire used for fencing.

To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend incorporating the following applicable measures into your project description:

- Do not disturb, remove, or trim woody plants greater than 15 ft tall during the bat birthing and pup rearing season (June 1 through September 15).
- Do not use barbed wire for fencing.

All other listed species:

For other listed species, including plants and invertebrates, that may be within the project area, the Service advises reviewing our standard avoidance and minimization measures at:

<https://www.fws.gov/pacificislands/promo.cfm?id=177175840>

We recommend you incorporate the relevant measures into the DEIS and all project implementation plans.

Compliance with the ESA

If the project cannot fully avoid the take of all threatened and endangered species, the project will need to seek an Incidental Take Permit under section 10(a)(1)(B) of the ESA. As part of the permit application, the project should develop a Habitat Conservation Plan that outlines the direct and indirect effects of the project to listed species, measures to avoid and minimize impacts, and compensatory mitigation to offset impacts that cannot be avoided. Please contact the Service for additional information on the permitting process. Please be aware that the Hawaii Division of Forestry and Wildlife (DOFAW) also administers a similar process pursuant to the State's endangered species law (HRS-195D). We recommend you meet with DOFAW to discuss compliance with the State endangered species law.

Service Comments Related to NEPA and Other Trust Resources

Below, the Service provides specific comments on particular sections of the DEIS:

Description of Interim Instream Flow Standard Decision and Order (Section 1.3.4)

The Service notes that the discussion on page 1-12 does not completely align with the information presented in Table 1.3. With regards to kalo growing streams, within which all diversion is to cease, Ohia/Waianu and Kulani/Hamau are both listed even though they have never been diverted. It might be clearer if the FEIS clarifies that out-of-basin diversions are not allowed in the future for these streams. In the discussion of streams with high biological value, it is not clearly indicated that Waiohue and West Wailua Iki streams were ordered to full restoration for biological value, and the latter also as a comparison to the partially restored East

Wailua Iki. Instead, this paragraph implies that all the streams it lists, including the two just mentioned, were restored to 64% of BFQ₅₀. In addition, this paragraph lists Piinaau and Wailuanui streams as having been partially restored for biological value, whereas they were ordered fully restored for kalo cultivation, and are mentioned as such in the preceding paragraph under kalo streams. All these inconsistencies should be corrected in the FEIS. It should also be ensured that this information is consistent between Section 1.3 and Section 4.2, where much of it is repeated.

In the discussion of streams that have barriers to biological or ecological improvement, Waiaka is listed as a stream that has been ordered restored to 20% of BFQ₅₀ in the CWRM D&O, but in Table 1.3 it is listed as having had no restoration ordered. This inconsistency should also be rectified in the FEIS.

Finally, although it is mentioned on page 1-13 that diversions of streams from the higher elevation eastern portion of the windward Haleakala watershed contribute to the operational capacity of the EMI system, it was noted by Service personnel in May 2019 that no water was being diverted east of Koolau Gap, and yet the system still seemed to be functional from Puohokamoa westward. Therefore, it does not appear that diversions from the more easterly streams are essential to the functioning of the ditch system. This should be clarified in the FEIS.

Central Maui Field System (Section 2.14)

On page 2-18 the DEIS indicates that of the total 92 mgd proposed for diversion, 26 mgd, or 28 percent, is lost to seepage and other factors between Maliko Gulch and the eventual points of delivery in the Central Maui field system. In addition, Table 2.1 indicates that over 79 percent of the water diverted is proposed to be used to irrigate orchard crops that constitute only 43 percent of the total acres irrigated. Much of this orchard production, which includes macadamia nuts and beverage crops, would appear to be targeted at markets other than Maui, where local demand for such products is limited. The Service recommends that the FEIS make a clearer distinction between which crops on the Mahi Pono lands are diversified agriculture intended to supply local demand on Maui, and which are cash crops intended for export, given that it appears the majority of the water proposed for diversion is intended to support the latter.

Alternatives Rejected (Section 3.1)

In addition to the preferred alternative, a 30-year lease allowing diversion of 87.95 mgd from the currently defined state lease areas, represented by the Proposed Action, the DEIS also considers but rejects 4 alternatives involving alternate water sources, and one alternative involving a change of system ownership.

In relation to alternative water sources, the DEIS in section 3.1 rejects the use of well water from central Maui, because this is contingent on recharge, and a certain amount of this water is brackish to varying extents. However, the Service notes that the DEIS also indicates that 28 percent of the water delivered by the EMI ditch system to central Maui is lost to seepage, and

that this large rate of loss is beneficial in that it recharges local aquifers. The Service contends that it therefore seems logical to try and recover some of the seepage via wells, and reiterates its previous position in support of using alternative water sources to the best extent possible in order to reduce reliance on surface water diversions, as stated in its letter of February 20, 2016, providing comments on the Notice of Intent for preparation of the current DEIS. In particular, the FEIS should explain the hydrological dynamics that might preclude the use of wells to seek recovery of such a large amount of seepage loss, which could offset the need for a certain amount of surface water diversion.

Alternatives Considered (Section 3.2)

In section 3.2, four additional alternatives are considered in addition to the preferred alternative:

- 1) *Reduced water volume* - As per section 3.2.1, the applicant wishes to divert the maximum 87.95 mgd of water allowed under the CWRM D&O in order to irrigate the maximum amount of acreage in central Maui. It is noted that even if this amount of water is allowed, it is only estimated to be sufficient to irrigate 23,000 acres of the 30,000 potentially available in this area for agriculture, and that the diversion allotment might be subsequently reduced by reservations for DHHL. As such, the applicant asserts that any long-term lease that permitted a lesser amount of water diversion would be inconsistent with their long-term objectives. In order to make up the shortfall in irrigation water, the applicant proposes to use well water, despite arguing against this approach in Section 3.1.
- 2) *Water lease with different terms* - In section 3.2.2.1, the applicant also asserts that any water lease of a duration shorter than 30 years could inhibit their ability to obtain financing for agricultural operations in central Maui, which would again be inconsistent with their objectives. The Service proposes that a 30-year lease with slightly different increments of diversion could in fact be viable (see new proposed Alternative 5 below).
- 3) *Modified lease area* - In section 3.2.2.2, the applicant notes that the BLNR has discretion to limit the geographic parameters of the lease to an area smaller than that currently proposed, and that this would not necessarily be inconsistent with the objectives of the Proposed Action. Given the higher quality of biological resources at the eastern end of the EMI system, the Service continues to support a Modified Lease Area alternative that concentrates surface water diversions in the more western Huelo and Honomanu license areas, with the more eastern Keanae and Nahiku license areas being utilized secondarily (see new proposed Alternative 5 below).
- 4) *No action* - Under this alternative, the applicant would continue to divert up to 80 mgd of water from the 4 state lease areas under a continuing series of one-year revocable permits. The Service considers this alternative inadvisable given that recent court decisions have judged this practice of using an indefinite series of short-term permits as substitutes for long-

term leases to be illegal. Additionally, this alternative does not adequately address potential project impacts to trust resources and endangered species.

Additional Alternative to be Considered

Given the considerations outlined above, the Service suggests that an additional hybrid alternative be evaluated in the FEIS, consisting of a 30-year lease with a gradually increasing diversion allotment, contingent upon demonstrated need, with the later increments of this diversion being obtained from points of diversion progressively further east along the EMI aqueduct system.

Specifically, the Service proposes that the FEIS evaluate an additional alternative consisting of a 30-year lease with an initial ceiling of 48 mgd taken from catchments in the Huelo and Honomanu license areas west of the Koolau Gap, with future options, upon proof of need and subject to approval by the BLNR, for two additional diversion increments of 20 mgd each, to be drawn from catchments successively further east in the Keanae and Nahiku license areas. This would provide a potential withdrawal of up to 88 mgd of diversion from the state license areas, as currently allowed under the CWRM D&O, but at the same time retain water in streams for public trust purposes until such time as the needs for offstream uses in Central Maui were demonstrated to the BLNR.

The above proposal is consistent with previous comments by the Service in its letter of February 20, 2016. On page 2-19 of the current DEIS, it is estimated that it will require 10 years to fully implement the Mahi Pono farm plan on 30,000 acres of former sugarcane lands. Since this conversion will not be instantaneous, it is clear that the amount of water diverted from the State lease areas will gradually ramp up over time, presuming no unanticipated delays or changes to the business model intervene. In its previous letter, the Service suggested using a phased approach to the water lease, with incrementally larger amounts of diversion being allowed as the demand for such was demonstrated, noting that it would also be consistent with the Hawaii State Water Code. The Service notes that this approach was not evaluated in the current DEIS, and so reiterates this suggestion for the FEIS.

The Service further notes that the DEIS estimates annual maintenance costs on the EMI aqueduct system will run on the order of \$2.5 million per year. A recent visit by Service staff to various portions of the EMI system in May 2019, in company with staff from the Hawaii Department of Land and Natural Resources, led to the observation that many sections of the system are already being blocked by treefalls and land slips, and that there was apparently no diversion of water in the system anywhere east of Puohokamoa Stream. This indicates that a significant portion of the system east of Koolau Gap is idle, that a large amount of maintenance on the ditch system has already been deferred, and that a major investment may be necessary to bring it back to its former level of operation. Given a 10-year deployment of the associated farm plan, this also indicates that a large initial dollar investment will need to be made up-front for many years just to keep the system operational, in anticipation of future returns as the diversified agricultural

operation is built out. Such a scenario comes with major uncertainties in regard to supply, demand, and macroeconomic cycles, thus the it is the Service's position that a lease for a modest amount of initial water delivery, coupled with future options for incrementally stepped up deliveries based on outcomes and need, is a more logical approach, and that such an alternative should be analyzed in the FEIS. This approach would also have the benefit of maximizing interim instream flows and associated ecological functions in the near term.

Comparative evaluation of reasonable alternatives (Section 3.4)

In regard to section 3.4, where the potential impacts of the various alternatives are compared, the Service has the following comments:

1) *Coastal Waters (Section 3.4.5)*

In this section on page 3-9, it is stated that neither the proposed action or any of the various alternatives would impact the coastal waters of East Maui, because the ocean environment is not affected by the intensity of stream flow, being so much larger. The Service considers analysis to be overly simplistic, because it overlooks the role that stream inflows play in regard to the delivery of land-based nutrient inputs to nearshore waters, and the associated positive effects on fisheries recruitment, particularly in oligotrophic tropical seas such as those surrounding the Hawaiian Islands. This topic needs to be addressed in the FEIS, and the superficial treatment of coastal water interactions with stream inflows needs to be examined in much greater detail.

b) *Flora, Fauna and Invertebrates (Section 3.4.8)*

The DEIS contends that modifying the lease area could result in greater public access, which would result in trampling and other impacts to the existing flora. In addition, significant concerns are raised about the possible introduction of invasive weeds. The Service notes, however, that the majority of the vegetation surrounding the EMI ditch system and its access roads is overwhelmingly dominated by invasive non-native plant species, the trampling or disturbance of which would present minimal concern, and that any weeds that might be transported into the license area by members of the public are already present and proliferating. As such, the potential biological impacts related additional public access to this area do not appear to be a reasonable basis for rejection of the Modified Lease Area alternative.

4.2.1 *Surface Waters (4-54)*

Given that the HEP model was originally developed by the Service, we consider the version tailored to Hawaiian stream ecosystems, HSHEP, to be a valid tool for estimating gains or losses of stream habitat and function related to varying diversion scenarios as used in the DEIS. As noted in section 4.2.1, this model's results indicate that the proposed action will

have a negative impact by reducing stream flow from that prevailing under natural, un-diverted conditions. The Service acknowledges that it is the mandate of Hawaii CWRM to balance the loss of such instream uses with the needs of offstream users. However, the Service also notes that under HRS 174C, agricultural diversions are not considered a public trust use. As stated by the Hawaii State Supreme Court in its Waiahole Ditch decision of August 22, 2000: “Although its purpose has evolved over time, the public trust has never been understood to safeguard rights of exclusive use for private commercial gain.”

The current CWRM D&O has resulted in the restoration of significant amounts of flowing stream habitat in East Maui, and the Service finds this commendable. However, as noted on page 4-58 of the DEIS, lateral entrainment and out-of-basin export by the ditch system of migratory diadromous biota, such as fishes and prawns, remains a significant issue. The Service recommends that the FEIS discuss in greater detail what steps might be taken to minimize such entrainment at the points of diversion, so as to allow the fullest possible utilization of the restored habitat by native organisms, and thereby reduce the biological impacts of the proposed action.

Biosecurity Provisions

While much of the ditch system and access roads are in areas where non-native species and ecosystems predominate, native forest is found in many locations of the system and the access roads and ditch are adjacent to native-dominated habitats upslope. As such, biosecurity is important to minimize movement of particularly noxious pests and threats into these areas. Two of the more recent concerns that should be addressed include Rapid Ohia Death and little fire ants (*Wasmannia auropunctata*). Little fire ants have been found in many areas of Maui, including Huelo, Haiku, and Nahiku on the north side of the island (<https://mauiinvasive.org/little-fire-ant/>). Similarly, Rapid Ohia Death caused by two species of fungal pathogens was first found on Maui in 2019 in a single tree on East Maui. It is important to prevent the spread of both of these invasive species into more intact native forests through adequate biosecurity. The following are recommendations for appropriate response to these and other invasive species that could be used to develop an appropriate biosecurity plan.

1. All work vehicles, machinery, and equipment should be cleaned, inspected by its user, and found free of mud, dirt, debris and invasive species prior to entry into the natural areas or native habitat.

a. Vehicles, machinery, and equipment must be thoroughly pressure washed in a designated cleaning area and visibly free of mud, dirt, plant debris, insects, frogs (including frog eggs) and other vertebrate species such as rats, mice and non-vegetative debris. A hot water wash is preferred. Areas of particular concern include bumpers, grills, hood compartments, areas under the battery, wheel wells, undercarriage, cabs, and truck beds (truck beds with accumulated material (intentionally placed or fallen from trees) are prime sites for hitchhikers).

- b. The interior and exterior of vehicles, machinery, and equipment must be free of rubbish and food. The interiors of vehicles and the cabs of machinery must be vacuumed clean. Floor mats shall be sanitized with a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution.
- c. Any machinery, vehicles, equipment, or other supplies found to be infested with ants (or other invasive species) must not enter natural areas or native habitat. Treatment is the responsibility of the equipment or vehicle owner and operator.

2. Little Fire Ants – All work vehicles, machinery, and equipment should be inspected for invasive ants prior to entering the natural areas or native habitat.

- a. A visual inspection for little fire ants should be conducted prior to entry into natural areas or native habitat.
- b. Hygiene is paramount but even the cleanest vehicle can pick up a little fire ant. Place MaxForce Complete Brand Granular Insect Bait (1.0% Hydramethylnon; <http://littlefireants.com/Maxforce%20Complete.pdf>) into refillable tamper resistant bait stations. An example of a commercially available refillable tamper resistant bait station is the [Ant Café Pro](https://www.antcafe.com/) (<https://www.antcafe.com/>). Place a bait station (or stations) in vehicle. Note larger vehicles, such as trucks, may require multiple stations. Monitor bait stations frequently (every week at a minimum) and replace bait as needed. If the station does not have a sticker to identify the contents, apply a sticker listing contents to the station.
- c. Any machinery, vehicles, equipment, or other supplies found to be infested with ants (or other invasive species) must not enter natural areas or native habitat until it is sanitized and re-tested following a resting period. Infested vehicles must be sanitized following recommendations by the Hawaii Ant Lab (<http://www.littlefireants.com/>) or other ant control expert and in accordance with all State and Federal laws. Treatment is the responsibility of the equipment or vehicle owner.
- d. Gravel, building materials, or other equipment such as portable buildings should be baited using MaxForce Complete Brand Granular Insect Bait (1.0% Hydramethylnon; <http://littlefireants.com/Maxforce%20Complete.pdf>) or AmdroPro (0.73% Hydramethylnon; <http://littlefireants.com/Amdro%20Pro.pdf>) following label guidance.
- e. Storage areas that hold field tools, especially tents, tarps, and clothing should be baited using MaxForce Complete Brand Granular Insect Bait (1.0% Hydramethylnon; <http://littlefireants.com/Maxforce%20Complete.pdf>) or AmdroPro (0.73% Hydramethylnon; <http://littlefireants.com/Amdro%20Pro.pdf>) following label guidance.

3. Base yards and staging areas inside and outside areas must be kept free of invasive species.

- a. Base yards and staging areas should be inspected at least weekly for invasive species and any found invasive removed immediately. Pay particular attention to where vehicles are parked overnight, keeping areas within 10-meters of vehicles free of debris. Parking on pavement and not under trees, while not always practical is best.
- b. Project vehicles or equipment stored outside of a base yard or staging area, such as a private residence, should be kept in a pest free area.

4. All cutting tools must be sanitized to prevent the Rapid 'Ōhi'a Death (ROD) fungus.

- a. Avoid wounding 'ōhi'a trees and roots with mowers, chainsaws, weed eaters, and other tools. Cut only the minimum amount of trees and branches as approved for the project.
- b. All cutting tools, including machetes, chainsaws, and loppers must be sanitized to remove visible dirt and other contaminants prior to entry into natural areas or areas with native habitat, and when moving to a new project area within the native habitat area. Tools may be sanitized using a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution. One minute after sanitizing, you may apply an oil based lubricant to chainsaw chains or other metallic parts to prevent corrosion.
- c. Only dedicated tools and chainsaws should be used to sample known or suspected ROD infected trees.
- d. Vehicles, machinery, and equipment must be cleaned as described in (1) above.

5. Imported firewood, logs, and 'ōhi'a parts:

- a. 'Ōhi'a firewood, 'ōhi'a logs, and 'ōhi'a parts should not be transported.

6. For individuals working in the field:

- a. **Before going into the field**, visually inspect and clean your clothes, boots, pack, radio harness, tools and other personal gear and equipment, for seeds, soil, plant parts, insects, and other debris. A small brush is handy for cleaning boots, equipment and gear. Soles of shoes should be sanitized using a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution.
- b. **Immediately before leaving the field**, visually inspect and clean your clothes, boots, pack, radio harness, tools, and other personnel gear and equipment, for seeds, soil, plant parts, insects, and other debris. Soles of shoes should be sanitized using a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution.

c. **Little fire ants nest in trees.** If you are under a tree and that tree is bumped or somehow stressed, the threat response of the ants is to fall from the leaves and sting the person under the tree. If you are subject to an ant-attack, do not panic. The ants are extremely small but their stings are painful so make sure you remove all ants from your body and clothing. The stings cause inch long welts that are itchy and painful, and can last for weeks. Treat stings as you would other insect stings. In some persons stings can produce life threatening reactions. Stocking antihistamine in the first aid kit is a reasonable precaution.

The Service appreciates the opportunity to comment on this DEIS. If you have any questions regarding this letter, please contact Fish and Wildlife Biologist Dan Polhemus by telephone at (808) 792-9415 or by electronic mail at Dan_Polhemus@fws.gov, or Fish and Wildlife Biologist John Vetter by telephone at (808) 792-9400 or by electronic mail at John_Vetter@fws.gov.

Sincerely,

MICHELLE
BOGARDUS

Digitally signed by
MICHELLE BOGARDUS
Date: 2019.11.06
15:10:39 -10'00'

Michelle Bogardus
Maui Nui & Hawaii Island Team Manager

cc:
NMFS
EPA
DLNR
DAR



10238-04
September 3, 2021

Ms. Michelle Bogardus
Maui Nui & Hawai'i Island Team Manager
Fish and Wildlife Service
United States Department of the Interior
Pacific Islands Fish and Wildlife Office
300 Ala Moana Blvd., Room 3-122
Honolulu, HI 96850

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Keʻanae, Honomanū and Huelo License Areas
01EPIF00-2017-TA-0059

Dear Ms. Bogardus:

Thank you for comments dated November 6, 2019 (01EPIF00-2017-TA-0059) regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The U.S. Fish and Wildlife Service (Service) is providing this letter in response to a request for comment on the two-volume Draft Environmental Impact Statement (DEIS) for a Proposed Lease (Water Lease) for the Nahiku, Keanae, Honomanu and Huelo license areas of Maui, Hawaii, pursuant to Hawaii Revised Statutes Chapter 343 (HRS 343). This letter has been prepared under the authority of and in accordance with provisions of the Endangered Species Act (ESA) of 1973 [16 U.S.C. 1531 et seq.; 87 Stat. 884], National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.; 83 Stat. 852], as amended, and other authorities mandating the Service's review of projects and provision of technical assistance to conserve trust resources.*

Response 1: We acknowledge your comments and understand that the comment letter provided by the U.S. Fish and Wildlife Service (USFWS) has been prepared under the authority and in accordance with provisions of the Endangered Species Act (ESA), National Environmental Policy Act of 1969, and other applicable authorities. Further, we understand your response is also to provide technical assistance to conserve trust resources.

Comment 2: Proposed Action

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The Proposed Action involves diversion of flows from a set of perennial streams on the north flank of the Haleakala volcano on the eastern section of Maui island, Hawaii (referred to subsequently as "East Maui") to agricultural fields in central Maui. These stream flows originate from four separate license areas running from east to west along the mountain as follows: Nahiku, with an area of approximately 10,111 acres; Keanae, with an area of approximately 10,768 acres; Honomanu, with an area of approximately 3,381 acres; and Huelo, with an area of approximately 8,753 acres. In aggregate, these license areas comprise approximately 33,013 acres, or 51.6 square miles, much of which is covered in native rain forest vegetation and inhabited by hundreds of native species, many of them endemic to the island of Maui, and some listed as threatened or endangered under the ESA.

Response 2: We concur that the Proposed Action involves the continued diversion of East Maui streams that are located on State lands (License Area), thus the need for a Water Lease from the State, as discussed in Section 2.1 to support the uses described in the EIS. However, please note that Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that are in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that the Board of Land and Natural Resources (BLNR) may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area and is part of the Nāhiku portion of the License Area.

We do not dispute your characterization of the License Area as, “*much of which is covered in native rain forest vegetation and inhabited by hundreds of native species, many of them endemic to the island of Maui, and some listed as threatened or endangered under the ESA.*” Appendix C to the EIS, the Terrestrial Flora and Fauna Technical Report prepared by SWCA Environmental Consultants (SWCA), as well as Sections 4.4.1 and 4.4.2 of the EIS discuss vegetation types and species found within the License Area.

Comment 3: *The diverted stream flows will be captured by the existing East Maui Irrigation Aqueduct System (referred to as the "EMI system"), which consists of 388 separate intake structures, 24 miles of ditches, 50 miles of tunnels, 12 inverted siphons, and numerous other small intakes, pipes and flumes. This system, which has operated in various forms since 1878, is now jointly owned by the East Maui Irrigation Company, Limited (EMI), a wholly owned subsidiary of Alexander & Baldwin, Inc. (A&B), and Mahi Pono LLC (Mahi Pono), a farming venture between Pomona Farming, LLC, a California-based agricultural group, and the Public Sector Pension Investment Board (PSP Investments), a Canadian pension management firm.*

Response 3: The stream diversion system is referred to as the EMI Aqueduct System throughout the Draft EIS. Your description is generally consistent with the following applicable language from Section 1.3.1 of the Draft EIS, but the number of inverted siphons identified in the Draft EIS is 13, not 12:

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The EMI Aqueduct System was constructed in phases, beginning in the 1870s and extending to its completion, as it currently stands, in 1923. It consists of approximately 388 separate intakes, 24 miles of ditches, and 50 miles of tunnels, as well as numerous small dams, intakes, pipes, 13 inverted siphons and flumes.

The EMI Aqueduct System has been operating since 1878. Your description of the ownership of the EMI Aqueduct System is not correct. The EMI Aqueduct System is owned by East Maui Irrigation Company, LLC whose members are Alexander & Baldwin, LLC, Series T and MP EMI, LLC.

Comment 4: *For the past 93 years, the EMI system has represented a highly integrated water catchment system that, until recently, diverted the majority of stream runoff from the north side of Haleakala to the agricultural lands of central Maui. At this time, the EMI system represents the largest privately owned water company in the United States, and during the days of plantation operation its Wailoa Canal had a higher flow than any natural river in the state of Hawaii.*

Response 4: Your Comment #4 above is unclear as we are unsure by what is meant by “stream runoff.” The EMI Aqueduct System diverts water directly from streams, not from runoff. However, please note as discussed in Section 4.2.1 of the Draft EIS, the EMI Aqueduct System was designed to capture 100% of normal low flows, which is roughly analogous to the stream’s baseflow. Moreover, stream baseflow should also be considered in the context of freshet flows that occur following heavy rainfall events. The streams of East Maui are notably very flashy, at times producing extremely high freshet flows compared to their base flow as a result of rainfall events. Thus, the total amount of stream flow is much higher than the baseflows. Specifically, Section 4.2.1 of the Draft EIS states:

The diversions in the EMI Aqueduct System were built to capture 100% of normal low flows plus some small amount of storm runoff. Hawaiian streams are “flashy”, meaning discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

Regarding your comment about the EMI Aqueduct System representing the largest privately owned water company in the United States, we are uncertain this is true. As reported in the Cultural Impact Assessment (CIA) provided as EIS Appendix F, the Wailoa Ditch, was started in 1918 and completed in 1923, and at that time it had a greater median flow than any natural river in Hawai‘i. As discussed in the Draft EIS, construction of the EMI Aqueduct System started in the 1870s.

Comment 5: *The EMI system is currently authorized to divert up to 80 million gallons of water per day (mgd) based on a one-year revocable permit approved by the State of Hawaii’s Board of Land and Natural Resources (BLNR).*

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Response 5: Note that the current RPs issued by the BLNR for the year 2021 allow for a lesser quantity to be diverted - only up to 45 mgd. The 2018 revocable permits allowed for up to 80 mgd to be diverted.

Comment 6: *The Proposed Action seeks the issuance of a single long-term (30- year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. These users include: (1) the County of Maui for its domestic water supply needs in both Upcountry Maui and at Nahiku near the east end of the EMI system; (2) the Department of Hawaiian Home Lands for a future water reservation sufficient to support current and future homestead needs as per the provisions of Section 221 of the Hawaiian Homes Commission Act; and (3) Mahi Pono, which seeks to pursue diversified agriculture on former Hawaiian Commercial & Sugar Company (HC&S) sugarcane plantation lands it has recent purchased from A&B. As reiterated at multiple points throughout the DEIS, the underlying purpose of the Proposed Action is to preserve and maintain the EMI water diversion system, including its access roads, and to continue to supply water for domestic and agricultural uses on Maui. In addition, the proposed action will involve access to State of Hawaii lands in order to maintain and repair existing roads and trails used as part of the EMI system.*

Response 6: Your characterization of the Proposed Action is generally consistent with what is described in the Draft EIS, with the modification that only a portion of the Nāhiku community is presently served by the County of Maui Department of Water Supply (MDWS). Moreover, Section 2.1.3.3 of the Final EIS, regarding the delivery of domestic water to the portion of Nāhiku community that is served by the MDWS, has been revised to clarify how water is received by the MDWS from the EMI Aqueduct System, as shown at pages 2-21 to 2-22.

With regard to water for the Department of Hawaiian Home Lands (DHHL), should any water lease be issued, it is understood that such a lease will be subject to a reservation in favor of the DHHL, as required by statute (HRS § 171-58(g)). As discussed in Draft EIS Section 2.1.1, "*The Water Lease is also subject to the DHHL rights to reserve water sufficient to support current and future homestead needs as provided by Section 221 of the Hawaiian Homes Commission Act.*" Notably, therefore, the requirement of State water leases is to reserve water for DHHL's needs, but not to physically deliver it. Specific information regarding the DHHL's future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

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The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown at pages 2-4 to 2-7. As explained on pages 2-4 to 2-7 the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water, the Commission on Water Resource Management (CWRM) could act on a reservation request related to a proposed lease.

As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the Department of Land and Natural Resources' (DLNR) Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

Note that Section 2.1.1 of the Draft EIS stated, with respect to the DHHL reservation, that "*Until that reservation is physically claimed, however, it will be available for use by the lessee.*" That statement has been clarified in the Final EIS as shown on page 2-4, as it is uncertain whether the DHHL reservation amount would be available to the lessee until such time as it is needed by DHHL. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

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Comment 7: *While the DEIS was in preparation, the State of Hawaii 's Commission on Water Resource Management issued a Decision and Order (D&O) on June 20, 2018, establishing Interim Instream Flow Standards for 27 East Maui streams that had been subject to IIFS Petitions since May 2001. The Proposed Action seeks to divert the maximum allowable amount of water specified for off-stream uses under the D&O from the four state license areas. This equates to approximately 88 mgd at Honopou Stream (the most westerly catchment on State land), and 92 mgd at Maliko Gulch (where the system transitions from diversion to agricultural field irrigation), with the additional water gained between the two reference points coming from private lands owned by affiliates of EMI. The diverted waters will be used to irrigate 26,600 acres of agricultural lands in central Maui owned by Mahi Pono and formerly devoted to sugarcane plantation use through its subsidiary Hawaiian Commercial & Sugar (HC&S), as well as to maintain current service to the Maui County Department of Water Supply (which also supplies the Kula Agricultural Park).*

Response 7: Indeed, the State of Hawai'i CWRM) issued its Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01 on June 20, 2018 (CWRM D&O), prior to the publication of the Draft EIS on September 23, 2019. The premise for this sequence was for the Draft EIS to use the CWRM D&O as a basis for determining the amount of water available for the Proposed Action and consequent analyses. As a correction to your comment, however, as discussed in Section 1.3.4 of the Draft EIS, the CWRM found that there were 24 streams, not 27, subject to the contested case. Specifically, Footnote 7 of Chapter 1 of the Draft EIS states:

The CWRM found that there were 24, not 27, streams that were the subject of the contested case. The difference being that (i) Waikani is not a stream but a waterfall of Wailuānui Stream; (ii) Alo is a tributary of Waikamoi Stream; (iii) Pua'aka'a is a tributary of Kopili'ula Stream; and (iv) Pi'ina'au and Palauhulu are separate streams that join together before reaching the ocean (CWRM D&O, FOF 56).

Your statement that the diverted water will be used to irrigate 26,600 acres is incorrect. As discussed in Section 2.1.4 of the Draft EIS, the Central Maui agricultural fields consist of approximately 30,000 acres of which approximately 20,650 acres will be irrigated farm land (emphasis added).

However, please note that Table 2-1 in the Draft EIS (which provides the components of the farm plan and proposed water usage) has been slightly revised in the Final EIS (as Table 2-2) to address rounding errors as shown on page 2-29.

We also offer a correction to your comment that the diverted waters are going to “*agricultural lands in central Maui owned by Mahi Pono and formerly devoted to sugarcane plantation use through its subsidiary Hawaiian Commercial & Sugar (HC&S).*” Please note that HC&S was a subsidiary of A&B as discussed in Section 1.3.2 of the Draft EIS, not Mahi Pono.

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Comment 8: *The proposed action will be privately financed, and does not propose or require the use of any public funds to cover the estimated \$2.5 million per year in EMI system operating and maintenance costs.*

Response 8: Your statement that the Proposed Action will not require the use of any public funds is correct. Regarding the operating and maintenance costs of the EMI Aqueduct System, Please note that the discussion in Section 2.1 of the Final EIS regarding the total operational costs for labor, fringe benefits, materials, professional services, taxes, maintenance, anticipated rental payments to the State for the Water Lease, and other expenses has been updated as shown on page 2-1 of the Final EIS based on the latest revocable permits costs for 2021. These costs are estimated to be approximately \$2.2 million per year.

Comment 9: *The Service notes that the amount of water diversion in the Proposed Action represents approximately 59 percent of the 157 mgd being delivered by the system past Maliko Gulch in 2006 when the HC&S sugarcane plantation was still in operation, equating to a 41% reduction over these recent rates of diversion. The amount of water diverted under the Proposed Action also represents only 20 percent of the full potential diversion capacity of the entire EMI system when it was formerly intact, and prior to inactivation of at least 70 points of diversion in compliance with the CWRM D&O. The Service commends all parties involved in having taken substantive steps to re-balance instream versus offstream uses in this sector.*

Response 9: For the Draft EIS, Akinaka & Associates prepared the calculations of water available for the Proposed Action after compliance with the CWRM D&O (92.32 mgd at Maliko Gulch). Based on this amount, the percentage calculations provided in your Comment #9 are accurate. As a further consideration, up until 1986, when the first voluntary return of water was made to the East Maui streams, the long-term average delivery by the EMI Aqueduct System was 165 mgd (CWRM D&O, Finding of Fact (FOF) 519) at Māliko Gulch. In 2006 it is estimated that the EMI Aqueduct System delivered approximately 156.69 mgd at Māliko Gulch. This reduction is due in part to some amount of stream restoration having been implemented. Under the Proposed Action, after compliance with the CWRM D&O, it is estimated that the delivery at Māliko Gulch will be approximately 92.32 mgd. The Service's commendation for the steps taken to re-balance instream and offstream uses is acknowledged.

Comment 10: *As a condition of this lease application, Alexander & Baldwin (A&B) was instructed by the BLNR on July 8, 2016 to prepare an EIS pursuant to HRS Chapter 343. The Service's comments are in response to the DEIS, which was submitted to the State of Hawaii's Office of Environmental Quality Control (OEQC) on September 9, 2019, with request that a notice be published by OEQC requesting public comment.*

Response 10: We acknowledge your comments and understand that these comments are in response to the Draft EIS published by the State of Hawai'i Office of Environmental Quality Control in the September 23, 2019 publication of *The Environmental Notice*.

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Comment 11: Potential Impacts of the Proposed Action to ESA-listed Species

The long history of stream diversions by the EMI system on East Maui has created a wide array of impacts to trust resources, including both the native stream biota, other species which inhabit the adjacent upland forests, and nearshore marine ecosystems that rely on streams for nutrient inputs.

Response 11: Please note that streams in East Maui have been diverted for over a century and it is not scientifically possible to fully document impacts that first took place more than a century ago as pre-diversion data does not exist. Certainly, for the more than 100 years since the EMI Aqueduct System was constructed and has been in operation, much of the State of Hawai‘i has witnessed a broad array of impacts to trust resources as a result of human activity in the islands. In East Maui, the EMI Aqueduct System has contributed to such impacts along with the expansion of public transportation corridors, urban and agricultural development, intended and unintentional introduction of non-native plants and animals, and public and private access and associated activities in undeveloped areas. Given this broad and complex history of human activity and their environmental impacts in East Maui, your comment broadly attributing a wide array of impacts to trust resources to the long history of stream diversion by the EMI Aqueduct System is an exaggeration. The biological studies prepared for the Draft EIS document the existing environmental conditions in East Maui, and offer some insight as to which impacts may be attributable to the EMI Aqueduct System.

The clearest impact attributable to the EMI Aqueduct System is on the stream biota, which is discussed in Section 4.2.1 of the Draft EIS, summarizing findings of the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) report in Appendix A to the EIS. The HSHEP model was designed to quantify how various man-made changes affect native Hawaiian amphidromous stream animals and is based on statewide observations of these animals' distribution and habitat. While there are no studies describing East Maui stream biota conditions prior to the construction of the EMI Aqueduct System, the HSHEP's "Baseline Condition – Natural Flow" model provides a means of estimating the naturally available habitat for stream species under natural conditions, i.e., no water diversions and no impacts on passage or entrainment of animals.

The impacts of the EMI Aqueduct System on species that inhabit the adjacent upland forest is less clear. Sections 4.4.1 and 4.4.2 of the Draft EIS, respectively, summarize a terrestrial flora and fauna biological survey that was prepared by SWCA in 2019, and included as Appendix C to the EIS. The flora survey documented the substantial establishment of non-native species, as well as the rarity and non-observance of native species, including protected species, in the License Area. Likewise, the fauna survey documented established populations of non-native mammals, birds and invertebrates, as well as the rarity or non-observance of native species, including protected species, in the License Area. Also documented was the retreat of various remaining native flora and fauna to upper elevation habitats. It is speculative, however, to single out the construction and operation of the EMI Aqueduct System as creating these impacts.

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A stream and ocean water chemistry assessment was conducted for the Draft EIS by Sea Engineering, Inc. (SE) and Marine Research Consultants, Inc. (MRC) in 2018, Appendix B to the EIS. The study, which is summarized in Section 4.2.3 of the Draft EIS, concluded that the effects of stream water on marine waters is minor in these habitats, due to the physical processes associated with a relatively small input of stream water to the vastly larger ocean environment. Although the study did not include a major storm event, freshet stream flows during such conditions would add orders-of-magnitude greater amounts of stream input to nearshore waters. However, the amount of water that can be diverted during such events would be miniscule in proportion. Therefore, neither during the prevailing weather conditions nor storm events would diversion of stream input affect nearshore ocean water chemistry on a significant scale. The prevailing condition of extreme mixing by physical forces is the most important factor in diminishing the zone of influence of stream water in the marine setting. As a result of the continual, intense, wave energy, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species.

However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

For historical context, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C to the EIS) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the HSHEP Model (Appendix A to the EIS) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As

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it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F to the EIS) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G to the EIS) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

Comment 12: *Several native stream-associated insect species occurring on East Maui water lease areas are now listed under the Endangered Species Act, specifically the damselflies *Megalagrion pacificum*, *Megalagrion nesiotes*, and *Megalagrion xanthomelas*, all three listed as endangered under the ESA. *Megalagrion pacificum* breeds in stream pools and side channels, with adults patrolling the margins of the stream corridor, and therefore suffers direct impacts from loss of habitat linked to diminished stream flows. The breeding habitats of *Megalagrion nesiotes* are not known, but the adults also utilize the stream corridor, and are not present in areas where diversions have created dry streambeds in the place of a formerly flowing channel. *Megalagrion xanthomelas* breeds in pools along stream terminal reaches, and although the species is not currently documented from windward East Maui, has the potential to occur there. Higher rates of diversion will therefore lead to higher rates of direct impact to all of these listed species.*

Response 12: Table 4-5 in Section 4.4.2 of the Draft EIS state that the three species mentioned above in Comment #12 are known to occur within the License Area. Moreover, please note that impacts related to *Megalagrion pacificum*, *Megalagrion nesiotes*, and *Megalagrion xanthomelas* were modeled the HSHEP model that more appropriately addressed habitat suitability associated with the species. The HSHEP model is provided in the EIS as Appendix A. The HSHEP model quantifies the distribution and extent of habitat and its response to the various flow restoration scenarios, summarized in Section 4.2.1 and Section 4.4.2 of the Draft EIS as it relates to the three species mentioned in Comment #12. Specifically, Section 4.2.1 of the Draft EIS states:

*Habitat suitability indices were developed for the typical group of native freshwater fish and macroinvertebrates found in Hawaiian streams, namely: 'O'opu nākea (*Awaous stamenius*); 'O'opu alamo'o (*Lentipes concolor*); 'O'opu naniha (*Stenogobius hawaiiensis*); 'O'opu nōpili (*Sicyopterus stimpsoni*); 'O'opu akupa (*Eliotris sandwicensis*); 'Ōpae kala'ole (*Atyoida bisulcata*); 'Ōpae 'oeha 'a (*Macrobrachium grandimanus*); and Hihīwai (*Neritina granosa*).*

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In addition to the species listed above, three native damselflies (Megalagrion xanthomelas, Megalagrion pacificum, and Megalagrion nesiotes) and an introduced mosquito (Culex quinquefasciatus) habitats were also modeled to see how the water diversions may impact their population sizes. (Trutta, p. 26, 2019) In general, restoration of stream flow should improve damselfly habitat and decrease mosquito habitat where these species use instream habitats. Restoration of baseflow, however, will likely also improve habitat conditions for a number of introduced predator and competitor species of the native damselflies and thus may not, in itself, increase damselfly populations.

As discussed in Section 2.1 of the EIS and Response #9 above, the Proposed Action is requesting to divert no more than the maximum amount of water allowed under the CWRM D&O, being approximately 92.32 mgd at Māliko Gulch (far less than was diverted in the past). The CWRM D&O requires full restoration of 10 streams within the License Area, and partial restoration for biological reasons to several other streams within the License Area. See CWRM D&O at 268. Hence, as concluded in Section 4.4.2 of the EIS, the Proposed Action is not anticipated to adversely impact these three special-status species. Conversely, it is anticipated that the Proposed Action will overall increase the habitat for these three special-status species compared to historical diversions during sugarcane operations.

Comment 13: *In addition, the ditch system also provides a lateral conduit across drainage divides for aquatic invasive species (AIS), such as topminnows, which can use the aqueduct to colonize upper stream reaches that they would otherwise not be able to access. Such species have been shown to significantly impact populations of ESA-listed native Megalagrion damselflies, and thus inhibit their recovery. The Service suggests that the FEIS devote discussion to how such migratory pathways for AIS could be interrupted. This could be as simple as putting small vertical drops in the ditch profile at appropriate and practical intervals, such most AIS cannot pass such obstacles when moving up-current. Once such species are prevented from continuously recolonizing such reaches, the existing populations may eventually be flushed out over time by strong flood events. Eliminating this dispersal pathway would thus aid in improving the biological integrity of restored habitat, and promote the recovery of ESA-listed damselfly species. The Service's Hawaii Fish Habitat Partnership program is available to provide technical expertise on such potential modifications to the EMI system.*

Response 13: We acknowledge your comments above that the EMI Aqueduct System can act as a lateral conduit for aquatic invasive species (AIS), such as topminnows, which can use the system to colonize stream segments in East Maui that they would otherwise be unable to colonize. However, please note that we believe that many upper reaches of streams would not be colonized by AIS such as topminnows as there are numerous weirs, or vertical drops within the EMI Aqueduct System that would prevent upstream travel. In instances where there are segments of the EMI Aqueduct System that would allow AIS to travel into the upper reaches of the streams, these will need to be addressed on a case-by-case basis to prevent or mitigate impacts

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from AIS, while ensuring that native instream species and habitats are not negatively impacted. Generally speaking, AIS migratory pathways can be mitigated, as suggested in Comment #13, adding small vertical drops in the ditch profile, or similar types of modifications to the ditches to impede movement of AIS such as adding physical barriers or control structures such as a dam. We acknowledge that the USFWS Hawai'i Fish Habitat Partnership program is available and provides technical expertise on such potential modifications to the EMI Aqueduct System.

Comment 14: *In addition to the listed damselflies, based on information provided in the DEIS and pertinent information in our files, including data compiled by the Hawaii Biodiversity and Mapping Project, there are 10 listed birds, 2 listed reptiles, 1 listed mammal, 7 listed insects, and 43 listed plants that may occur or have final designated Critical Habitat within or near the vicinity of the license areas proposed for diversion. These listed species are as follows:*

***See USFWS comment letter dated November 6, 2019 at pages in Appendix N to the EIS for list.**

Response 14: We acknowledge your comments and understand that data compiled by the Hawai'i Biodiversity and Mapping Project shows that there are 10 listed birds, 2 listed reptiles, 1 listed mammal, 7 listed insects, and 43 listed plants that may occur or have final designated critical habitat within or near the vicinity of the License Area. The list that you provided on pages 4-6 of your comment letter is generally consistent with what was provided in Section 4.4 and Appendix C of the EIS as it relates to the species within the License Area. The species identified in your letter that were not included in Section 4.4 of the Draft EIS were added to the Final EIS as shown on pages 4-115 to 4-117 as it relates to flora, and pages 4-127 to 4-128 as it relates to fauna.

Comment 15: Impacts to Listed Species in the Lease Areas

*The Service therefore has a clear interest in addressing the amount of future water diversion proposed for East Maui, the license areas in which it will occur, and the impacts to native ecosystems and species that may result from the continued operation and maintenance of the EMI system. The native forest habitat becomes progressively more extensive and of higher ecological integrity as one moves eastward from the Huelo and Honomanu license areas and into the Keanae and Nahiku areas. The native species richness in the stream communities follows a similar west-to-east progression. Therefore, diversions from the Nahiku and Keanae license areas are likely to be of higher impact to ESA-listed species, and native Hawaiian plant and animal species in general than are diversions from the Huelo and Honomanu areas. Among the major threats to the survival in the wild of the three listed forest bird species (akohekohe, iiwi, and kiwikiu) is mortality caused by avian malaria, which is vectored by the introduced mosquito *Culex quinquefasciatus*. This mosquito species breeds in stagnant pools free from fish in dewatered stream beds, and is by contrast uncommon along stream channels with continuous flow and healthy fish populations. By converting continuously flowing streams into nearly dry beds with scattered small pools, the EMI system's diversions have created corridors of habitat by which *Culex* mosquitoes can penetrate uphill more deeply into the native forest, and more*

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readily reach susceptible native forest bird populations. This represents a significant, although indirect, impact of the proposed diversions to this set of listed species.

Response 15: We acknowledge your comments. As discussed in Section 4.4.1 of the Final EIS, the native forest habitat becomes progressively more extensive and of higher ecological integrity as one moves eastward from the Huelo and Honomanū portions of the License Area and into Ke‘anae and Nāhiku portions of the License Area.

While we acknowledge your interest in the impacts of the Proposed Action on native forest habitat within and beyond the License Area, we are confident that the Draft EIS has adequately established the scope of impacts associated with the Proposed Action in compliance with HRS Chapter 343 and HAR Title 11, Chapter 200. With the revisions that have been incorporated in the Final EIS based on comments received on the Draft EIS, the Final EIS complies with the content requirements for assessing impacts of the Proposed Action. This includes addressing the impact that the Proposed Action will have on native forests, which is not anticipated to extend beyond the License Area.

Regarding your comment that diversions from the Nāhiku and Ke‘anae portions of the License Area are more likely to impact ESA-listed species and native plant and animal species than diversions from the Huelo and Honomanū portions of the License Area, please note that the CWRM D&O restored flow to the majority of the streams within the Nāhiku and Ke‘anae portions of the License Area. Table 1-3 and Figure 1-3 of the Draft EIS show the restoration status of each stream within the License Area. Specifically, the majority of the streams in the Ke‘anae portion of the License Area were restored for “Full Restoration” and “Biological / Limited Streams.” Within the Nāhiku portion of the License Area, Makapipi stream was ordered for full restoration and Hanawī and Kapaula streams were ordered to be restored as “Connectivity Streams.” Hence, the impact from the Proposed Action in these areas will be minimal as the amount of water that can be diverted is restricted. Please note that Table 1-3 and Figure 1-3 in the Final EIS have been revised as shown on pages 1-19 to 1-23 to accurately reflect the changes made in Section 1.3.4 regarding the stream references.

Your suggestion that the mosquito *Culex quinquefasciatus* is somehow limited in its breeding habitat to stagnant pools free from fish in dewatered stream beds is unfounded. The surrounding forests are a huge rainfall catchment area with innumerable opportunities for standing water to occur long enough for mosquitos to breed. Therefore, any suggestion that dewatered stream beds could serve as identifiable corridors for mosquitos into native upland forests is also unfounded. Nevertheless, the instream amount of potential mosquito habitat was quantified using the HSHEP model presented in Appendix A and summarized in Section 4.2.1 of the EIS. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat. Thus, an increase in mosquito habitat was predicted to occur at diverted flows. In all cases, no increase in stream discharge diversion has been proposed. This is a result of the diversions already conveying baseflow from the diverted streams. Therefore, the Proposed Action will not increase

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mosquito habitat even in locations where the flow restoration has not been proposed. Based on the modeled relationship between increased streamflow and decreased mosquito habitat, in all cases where flow restoration has been proposed there is expected to be a decrease in mosquito breeding habitat as discussed in Section 4.2.1 and Section 4.4.2 of the Draft EIS. While the HSHEP analysis was focused only on mosquito breeding habitat, given the impact of avian malaria on native stream birds, the Proposed Action will do nothing to increase mosquito breeding habitat and therefore should not negatively impact listed native birds.

Your speculation that dewatered streams could serve as a corridor for mosquitos transmitting avian malaria to reach upland forest habitats may be based on a misunderstanding of why protected bird species remain in those areas. There is evidence of a thermal barrier to mosquitos at higher elevations where the temperature declines. Currently, Hawaiian honeycreepers (including 'akohekohe, 'i'iwi, and kiwikiu that you mention) are already impacted by avian malaria below this thermal barrier, which occurs above 4,921 feet above sea level in the winter months and above 6,234 feet above sea level in the summer months, to the degree that they are rarely found at lower elevations (USFWS 2006, Warner 1968). In other words, this disease and the presence of disease-carrying mosquitos, has already nearly extirpated low-elevation populations of these birds. If there is a thermal barrier to mosquitos, other protected bird populations at higher elevations would also have less potential for contracting avian malaria.

This information has been clarified in Section 4.4.2 of the Final EIS as shown on pages 4-126 to 4-127, and pages 4-130 to 4-131 as it relates to impacts from mosquitos of fauna.

Comment 16: Impacts to Listed Species in Agricultural Areas

*The DEIS encompasses the redevelopment of the fields in the central plain of Maui into diversified agriculture by Mahi Pono. The fallow fields and roadsides in this area contain known occurrences of the endangered Blackburn's sphinx moth and one of its key host plants, the non-native tree tobacco (*Nicotiana glauca*), is widespread in this habitat. The DEIS should include avoidance and minimization measures to ensure no adverse impacts to this widespread species will occur as a result of the field redevelopment of long term operations of agriculture use.*

Blackburn's Sphinx Moth:

We offer the following survey recommendations to assess whether the Blackburn's sphinx moth is present within an action area:

- A biologist familiar with the species should survey areas of proposed activities for Blackburn's sphinx moth and its larval host plants prior to work initiation.*
- Surveys should be conducted during the wettest portion of the year (usually November-April or several weeks after a significant rain) and within 4-6 weeks prior to construction.*
- Surveys should include searches for eggs, larvae, and signs of larval feeding (chewed stems, frass, or leaf damage).*

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Response 16: As discussed in Section 4.4.2 (Central Maui) and Appendix C of the Draft EIS, the Blackburn's Sphinx Moth is identified as "May Occur in Central Maui" according to the USFWS, and the tree tobacco being observed within the Central Maui agricultural fields. Therefore, mitigation measures regarding the Blackburn's Sphinx Moth are recommended. Specifically, Section 4.4.2 of the Draft EIS states that:

A survey for potential larval host plants for Blackburn's sphinx moth (particularly tree tobacco) should be conducted by biologists before construction/vegetation clearing. Results of the survey should be provided to the USFWS. If host plants are found, surveys for Blackburn's sphinx moth should be performed according to the most recent USFWS guidance, and preferably during the wet season (January to April), roughly 4 to 8 weeks following a significant rainfall event. Results of the survey should be provided to the USFWS. Any necessary follow-up actions should be coordinated with the USFWS.

Comment 17: *If moths or the native aiea or tree tobacco over 3 feet tall are found during the survey, please contact the Service for additional guidance to avoid take.*

Response 17: At any time that the Blackburn's sphinx moths or the native aiea or tree tobacco over three feet tall are found during the suggested surveys, Mahi Pono will contact the USFWS for additional guidance as mentioned in Section 4.4.2 of the Draft EIS.

Comment 18: *If no Blackburn's sphinx moth, aiea, or tree tobacco are found during surveys, it is imperative that measures be taken to avoid attraction of Blackburn's sphinx moth to the project location and prohibit tree tobacco from entering the site. Tree tobacco can grow greater than 3 feet tall in approximately 6 weeks. If it grows over 3 feet, the plants may become a host plant for Blackburn's sphinx moth. We therefore recommend that you:*

- *Remove any tree tobacco less than 3 feet tall.*
- *Monitor the site every 4-6 weeks for new tree tobacco growth before, during and after the proposed ground-disturbing activity.*
- *Monitoring for tree tobacco can be completed by any staff, such as groundskeeper or regular maintenance crew, provided with picture placards of tree tobacco at different life stages.*

Please note: Based on the size and the location of the agricultural operations proposed, we expect that Blackburn's sphinx moth occur throughout the area.

Response 18: We acknowledge your comments above in Comment #18. Please note that Section 4.4.2 of the Draft EIS discusses the recommended mitigation measures mentioned in Comment #17 above.

Comment 19: *Hawaiian seabirds:*

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The DEIS also states that some new infrastructure will be associated with the redevelopment of these fields. Avoidance and minimization for seabirds should be incorporated into any development, particularly related to lighting, to avoid take of these listed taxa.

- *Fully shield all outdoor lights so the bulb can only be seen from below bulb height and only use when necessary.*
- *Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.*
- *Avoid nighttime construction during the seabird fledging period, September 15 through December 15.*

Response 19: Please note that Section 4.4.2 of the Draft EIS with respect to Central Maui did discuss mitigation measures to minimize potential impacts to seabirds. Specifically, Section 4.4.2 of the Draft EIS states:

To minimize potential impacts to seabirds, the following measures should be followed:

- *Construction activity should be restricted to daylight hours as much as practicable during the seabird peak fallout period (September 15 to December 15) to avoid the use of nighttime lighting that could attract seabirds.*
- *All outdoor lights should be shielded to prevent upward radiation. This has been shown to reduce the potential for seabird attraction. A selection of acceptable, seabird-friendly lights can be found online at the Kauai Seabird Habitat Conservation Program website: <http://www.kauai-seabirdhcp.info/lighting-homes-businesses/>*
- *Outside lights not needed for security and safety should be turned off from dusk through dawn during the fledgling fallout period (September 15 to December 15).*

Please note that the above discussion has been expanded to include the mitigation measures included in Comment #19. See page 4-135 of the Final EIS.

Comment 20: *Hawaiian hoary bat:*

The redevelopment of the agricultural fields into orchards may create breeding habitat for the endangered Hawaiian hoary bat, which is known to be attracted to orchards, mac-nut farms, and similar tree-based agriculture for foraging and roosting. The Hawaiian hoary bat roosts in both exotic and native woody vegetation across all islands and will leave young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet (ft) or taller are cleared during the pupping season, there is a risk that young bats could

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inadvertently be harmed or killed since they are too young to fly or may not move away. Additionally, Hawaiian hoary bats forage for insects from as low as three feet to higher than 500 ft above the ground and can become entangled in barbed wire used for fencing.

To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend incorporating the following applicable measures into your project description:

- Do not disturb, remove, or trim woody plants greater than 15 ft tall during the bat birthing and pup rearing season (June 1 through September 15).*
- Do not use barbed wire for fencing.*

Response 20: The mitigation measures you suggest are consistent with the measures recommended in the EIS. As noted in Section 4.4.2 of the EIS regarding Central Maui, and in Section 7.2 of Appendix C to the EIS, mitigation to address the potential of impacts to Hawaiian hoary bat include:

If felling of standing trees occurs during the bat breeding season, direct impacts could occur to juvenile bats that are too small to fly but too large to be carried by a parent. To minimize this impact, no trees taller than 15 feet (4.6 m) should be trimmed or removed between June 1 and September 15.

The use of barbless top-strand wire is recommended for all fence construction to avoid entanglement of Hawaiian hoary bat.

It has also been noted in Section 4.4.2 of the EIS that Mahi Pono has used barbed wire strand as a deterrent to deer, which, if unchecked, could destroy crops. However, Mahi Pono has indicated that it will work with the State Division of Forestry and Wildlife (DOFAW) and the Department of Agriculture to determine whether the existing fences are a danger to the Hawaiian hoary bat and if so, whether an effective alternative can be implemented to deter deer from entering on to the farm land.

Moreover, please note that the analysis presented in Section 6.1.3.1 of Appendix C and summarized in Section 4.4.2 of the Final EIS has been expanded to discuss that orchard crops increase the breeding habitat of the Hawaiian hoary bat, as shown on page 4-134 to page 4-135

Comment 21: *All other listed species:*

For other listed species, including plants and invertebrates, that may be within the project area, the Service advises reviewing our standard avoidance and minimization measures at: <https://www.fws.gov/pacificislands/promo.cfrn?id=177175840>

We recommend you incorporate the relevant measures into the DEIS and all project implementation plans.

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Response 21: Please note that we have reviewed the provided link above in Comment #21 and the mitigation measures discussed in Section 4.4.1 and Section 4.4.2 of the Draft EIS are generally consistent with what is provided in the link.

Comment 22: *Compliance with the ESA*

If the project cannot fully avoid the take of all threatened and endangered species, the project will need to seek an Incidental Take Permit under section 10(a)(1)(B) of the ESA. As part of the permit application, the project should develop a Habitat Conservation Plan that outlines the direct and indirect effects of the project to listed species, measures to avoid and minimize impacts, and compensatory mitigation to offset impacts that cannot be avoided. Please contact the Service for additional information on the permitting process.

Response 22: Please note that the Proposed Action constitutes the issuance of a long-term Water Lease as discussed in Response #2 above. Its issuance would allow for the continued operation of the EMI Aqueduct System to deliver water for uses described in the EIS. As a continuation of existing activities in East Maui and Upcountry Maui and a continuation of agricultural activity in Central Maui, no take of any listed species is anticipated from the Proposed Action. Hence, the Proposed Action will not require a Habitat Conservation Plan and Incidental Take Permit. However, we acknowledge that if the Mahi Pono farm plan cannot fully avoid the take of all threatened and endangered species, Mahi Pono will comply with all laws, rules and regulations as necessary, and consult with the USFWS as it further implements its farm plan.

Comment 23: *Please be aware that the Hawaii Division of Forestry and Wildlife (DOFAW) also administers a similar process pursuant to the State's endangered species law (HRS-195D). We recommend you meet with DOFAW to discuss compliance with the State endangered species law.*

Response 23: We acknowledge your Comment #23 and understand that the State of Hawai'i DLNR DOFAW administers a permitting process pursuant to the State's endangered species law (HRS Chapter 195D), as discussed in the SWCA report at Section 2.3 Mahi Pono will consult with the DOFAW as it further implements its farm plan.

Comment 24: *Service Comments Related to NEPA and Other Trust Resources*

Below, the Service provides specific comments on particular sections of the DEIS: Description of Interim Instream Flow Standard Decision and Order (Section 1.3.4) The Service notes that the discussion on page 1-12 does not completely align with the information presented in Table 1.3. With regards to kalo growing streams, within which all diversion is to cease, Ohia/Waianu and Kulani/Hamau are both listed even though they have never been diverted. It might be clearer if the FEIS clarifies that out-of-basin diversions are not allowed in the future for these streams.

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Response 24: Table 1-3 of the EIS specifically addresses the Streams in the License Area as Presented in the CWRM D&O. ‘Ōhi‘a / Waianu and Kualani / Hāmau streams were specified by the Petitioners in the Petitions for Interim Instream Flow Standards (IIFS) filed with CWRM in 2001. On June 20, 2018, CWRM issued its CWRM D&O regarding the Petitioned streams. As explained in Section 4.17.2.2 of the Final EIS, ‘Ōhi‘a / Waianu and Kualani / Hāmau Streams have never been diverted by the EMI Aqueduct System as the streams lie below the EMI Aqueduct System, as noted in CWRM D&O FOF 57 and Draft EIS Table 1-3. Under the CWRM D&O, CWRM ordered that ‘Ōhi‘a / Waianu and Kualani / Hāmau streams (as well as Honopou, Huelo (Puolua), Hanehoi, Pi‘ina‘au, Palauhulu, Waikamilo, Wailuanui, and Makapipi, would have all diversions ceased to allow for all water to flow to the taro growing areas or for community and non-municipal domestic use, as discussed in Section 1.3.4 of the Draft EIS.

Comment 25: *In the discussion of streams with high biological value, it is not clearly indicated that Waiohue and West Wailua Iki streams were ordered to full restoration for biological value, and the latter also as a comparison to the partially restored East Wailua Iki. Instead, this paragraph implies that all the streams it lists, including the two just mentioned, were restored to 64% of BFQ₅₀.*

Response 25: Table 1-3 in the Draft EIS lists the CWRM D&O restoration status for Waiohue Stream as “Full”, indicating that this stream was ordered for full restoration. The Draft EIS also cites the CWRM D&O Conclusions of Law (COL) 131, which explained that certain of the Petitioned streams, including Waiohue, have “*the potential to benefit greatly from the restoration of flow to a minimum H₉₀ level based on the biological diversity and habitat that already exists under diverted conditions. These streams should be restored to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and customary Native Hawaiian rights.*” The Final EIS will include a clarifying statement to the aforementioned discussion that will state “Waiohue stream was ordered to be fully restored pursuant to the CWRM D&O.”

As for West Wailuāiki Stream, Section 1.3.4 of the Draft EIS on page 1-12 states that:

...the CWRM determined that West Wailuāiki presents a unique research opportunity to collect valuable information regarding the impact of full restoration of a stream versus habitat restoration (H₉₀). East and West Wailuāiki lie in close proximity to each other with similar biological values and similar habitat biota. The CWRM intends for these two streams to be studied in the future in combination with one another to see the impact, if any, of full restoration versus habitat restoration (CWRM D&O, COL 135).

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The Final EIS includes the clarifying statement to the aforementioned discussion that states, “*West Wailuāiki Stream was ordered to be fully restored pursuant to the CWRM D&O*” as shown on page 1-14.

Language from Page v of the Executive Summary of the CWRM D&O has also added to Section 1.3.4 of the Final EIS as shown on pages 1-14 to 1-16.

Comment 26: *In addition, this paragraph lists Piinaau and Wailuanui streams as having been partially restored for biological value, whereas they were ordered fully restored for kalo cultivation, and are mentioned as such in the preceding paragraph under kalo streams. All these inconsistencies should be corrected in the FEIS. It should also be ensured that this information is consistent between Section 1.3 and Section 4.2, where much of it is repeated.*

Response 26: Both Pi‘ina‘au and Wailuānui streams were ordered for full streamflow restoration under the CWRM D&O. This was noted in Table 1-3 of the Draft EIS. In the CWRM D&O, streams were analyzed and noted for more than one type of value. Pi‘ina‘au and Wailuānui are examples of this. In Section F.1 of the CWRM D&O COL, entitled “Water for streams with high biological value”, COL 132(a) and (b) provide as follows:

132. The streams that would most benefit from having IIFS set at H₉₀ or above are:

a. Pi‘ina‘au –potential to sustain a large and diverse population of native stream species if flow is restored to the stream;

b. Wailuanui – flow restoration would likely increase habitat availability for the rich diversity of native species represented in the stream while also creating connectivity and suitable depths for native species in the currently dry or shallow sections dewatered by the diversions.

At the same time, in Section F.2 of the CWRM D&O COL, entitled “Conveyance of water to kalo growing areas or for community use”, COL 138 and 139 provide:

138. The following streams will have all diversions ceased to allow for all water to flow to the taro growing areas or for community and non-municipal domestic use: Honopou, Huelo (Puolua), Hanehoi, Pi‘ina‘au, Palauhulu, Waikamilo, Wailuanui, Ohia, Waianu, Kualani, and Makapipi. (emphasis added)

139. All diversions for these streams shall be modified so that no out of watershed transfers will occur from these streams.

As such, it is not inconsistent to view Pi‘ina‘au or Wailuānui as biological streams as well as streams for kalo growing and community use. Reference to COL 138 was made in the Draft EIS

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in Section 1.3.4. Reference to COL 132(a) and (b) has been added to Section 1.3.4 of the Final EIS as shown on page 1-14.

Comment 27: *In the discussion of streams that have barriers to biological or ecological improvement, Waiaaka is listed as a stream that has been ordered restored to 20% of BFQ₅₀ in the CWRM D&O, but in Table 1.3 it is listed as having had no restoration ordered. This inconsistency should also be rectified in the FEIS.*

Response 27: Table 1-3 of the Draft EIS correctly notes, and is consistent with the CWRM D&O chart at p. 268, that the ordered restoration status for Waiaaka stream is “none” at the IIFS location above Hāna Highway. As presented in the CWRM D&O COL, Section F.3., Waiaaka Stream is identified as one of those streams that have barriers to biological or ecological improvements. As cited in the Draft EIS, CWRM D&O COL 146 states, “g. Waiaaka – there is a single diversion of the stream at the Koolau Ditch. There is very little habitat above the ditch with most of the hydrologic unit below the ditch. The stream provides 100 percent of the expected natural habitat availability even under diverted conditions.” The statement in Section 1.3.4 of the Final EIS regarding Waiaaka Stream of the Final EIS has been revised to clarify this as shown on page 1-13.

Comment 28: *Finally, although it is mentioned on page 1-13 that diversions of streams from the higher elevation eastern portion of the windward Haleakala watershed contribute to the operational capacity of the EMI system, it was noted by Service personnel in May 2019 that no water was being diverted east of Koolau Gap, and yet the system still seemed to be functional from Puohokamoa westward. Therefore, it does not appear that diversions from the more easterly streams are essential to the functioning of the ditch system. This should be clarified in the FEIS.*

Response 28: At the time the USFWS personnel attended a field visit, water needs on the Mahi Pono farm were low, as Mahi Pono is in its initial stages of establishing its full diversified agricultural plan within the Central Maui agricultural fields. As Mahi Pono continues to build its farm, year by year, its water needs will increase and diversion of waters from streams east of Puohokamoa will increase, as allowed by the IIFS set by the CWRM D&O. Thus, it is incorrect to conclude that diversions from streams east of Puahokamoa are not essential, or that those portions of the EMI Aqueduct System are not essential. Your field visit was made at a point in time and not reflective of the long-term needs of a farm plan that would re-establish sustainable agriculture across the Central Maui agricultural fields.

Comment 29: *Central Maui Field System (Section 2.14)*

On page 2-18 the DEIS indicates that of the total 92 mgd proposed for diversion, 26 mgd, or 28 percent, is lost to seepage and other factors between Maliko Gulch and the eventual points of delivery in the Central Maui field system. In addition, Table 2.1 indicates that over 79 percent of the water diverted is proposed to be used to irrigate orchard crops that constitute only 43

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percent of the total acres irrigated. Much of this orchard production, which includes macadamia nuts and beverage crops, would appear to be targeted at markets other than Maui, where local demand for such products is limited. The Service recommends that the FEIS make a clearer distinction between which crops on the Mahi Pono lands are diversified agriculture intended to supply local demand on Maui, and which are cash crops intended for export, given that it appears the majority of the water proposed for diversion is intended to support the latter.

Response 29: Regarding your comment about the distinction between which crops on Mahi Pono lands are intended to supply the local demand and which are cash crops intended for export, it is anticipated at full development of their farm plan, local sales by Mahi Pono and its farm tenants are expected comprise 65% of total sales, with exports at 35%. Local sales are preferred over exports because it saves on overseas shipping costs. Both local sales and exports are beneficial to Hawai'i: local sales that displace imports reduce the financial drain on the State as a whole, while exports generate income for the State. Please note that Section 4.7.4 of the Final EIS, which was included in the Draft EIS as well, states that local sales by Mahi Pono and its farm tenants are expected comprise 65% of total sales, with exports at 35% on page 4-303.

You are correct that Table 2-1 estimates that orchards could use 79.48% of the total water under the Mahi Pono farm plan. As noted in Table 2-1, approximately 42% of the Central Maui agricultural fields (approximately 12,850 acres of the total 30,000 acres) are planned for orchard crops. Although, as recognized in the EIS, the Mahi Pono farm plan is necessarily an evolving plan that must be responsive to market conditions as well the existing local farming community.

It is unclear where your reference to the 26 mgd or 28 percent seepage figures come from as no such figures are referenced on page 2-18 of the Draft EIS or other places in the Draft EIS. As explained in Section 2.1.4 of the Draft EIS, seepage loss, which is recharged back into the groundwater, takes place beyond the last stream diversion at Māliko Gulch. There is no seepage loss in the EMI Aqueduct System up to Māliko Gulch. Moreover, the seepage loss that does occur is about 22.7% from the Central Maui Field Irrigation System. In other words, the losses are not within the EMI Aqueduct System. The losses occur within the Central Maui Field Irrigation System. The Final EIS clarifies the issue of seepage to recharge the Central Maui aquifer system, as shown on pages 4-74 to 4-77.

Comment 30: *Alternatives Rejected (Section 3.1)*

In addition to the preferred alternative, a 30-year lease allowing diversion of 87.95 mgd from the currently defined state lease areas, represented by the Proposed Action, the DEIS also considers but rejects 4 alternatives involving alternate water sources, and one alternative involving a change of system ownership.

In relation to alternative water sources, the DEIS in section 3.1 rejects the use of well water from central Maui, because this is contingent on recharge, and a certain amount of this water is brackish to varying extents. However, the Service notes that the DEIS also indicates that 28

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percent of the water delivered by the EMI ditch system to central Maui is lost to seepage, and that this large rate of loss is beneficial in that it recharges local aquifers. The Service contends that it therefore seems logical to try and recover some of the seepage via wells, and reiterates its previous position in support of using alternative water sources to the best extent possible in order to reduce reliance on surface water diversions, as stated in its letter of February 20, 2016, providing comments on the Notice of Intent for preparation of the current DEIS. In particular, the FEIS should explain the hydrological dynamics that might preclude the use of wells to seek recovery of such a large amount of seepage loss, which could offset the need for a certain amount of surface water diversion.

Response 30: Please see Response #29 above regarding the system losses being estimated at 22.7%, not 28% and where the seepage actually occurs, in the Central Maui Field Irrigation System, not the EMI Aqueduct System. Regarding your comment about using seepage via wells, it seems that there is a misunderstanding in the use of water resources for the Mahi Pono farm plan. Please note as discussed in Section 2.1.4 of the Draft EIS that well water will be used to supplement the surface water diversions and irrigate the Central Maui agricultural fields. Specifically, as stated in Section 2.1.4 of the Draft EIS:

Surface water can be supplemented by a brackish groundwater amount equal to 20 percent of surface water. Taking into account the CWRM D&O, it is estimated that there could be up to 16.47 mgd of brackish groundwater used in the Central Maui agricultural fields. (Appendix I Plasch, 2019)

With regards to the alternative discussion in Section 3.1.1.1 (Groundwater Alternative) of the Draft EIS, this is discussed as an alternative that could reduce the dependence of the surface water needed by supplementing surface water, but could not replace all surface water. Please note that the Draft EIS referred to 15 brackish groundwater wells as being available to Mahi Pono in Section 2.1.4 and Section 3.1.1.1 which discussed the Groundwater Alternative. This information was derived from the CWRM D&O FOF 738, as that was the number of brackish groundwater wells utilized during sugarcane operations by A&B. However, Mahi Pono only has access to 10 brackish wells that can serve the Central Maui agricultural fields. Please note that Section 2.1.4, Figure 2-7, and Section 3.1.1.1 of the Final EIS have been revised as shown on pages 2-24, 2-25, and pages 3-3 to 3-4.

Moreover, the Sustainable Yield (SY) of the Central Maui aquifers are relatively low compared to other aquifers on the island. However, historically, HC&S pumped the Central Maui aquifers much higher than the SY due to the amount of seepage in the Central Maui agricultural fields that occurred from system losses in the Central Maui Field Irrigation System during sugarcane operations. It should be noted that the amount of surface water diverted to Central Maui during 1987 to 2006 was approximately 146.64 mgd, which is significantly more than the amount estimated to be diverted under the Proposed Action (92.32 mgd) as discussed in Section 2.1.1 of the Draft EIS. It should be noted that sugarcane is a more salt tolerant crop compared to the crops proposed under the Mahi Pono farm plan. It is anticipated that finding viable agricultural

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crops will require a range of trial-and-error efforts to identify an ideal crop mix that coordinates to the quality and amount of water available. Further, as noted in Section 5 of Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts) in the Draft EIS:

The irrigation system in Central Maui was not designed to vary the mix of surface water and brackish groundwater to accommodate crop needs of different fields. As a result, the surface-to-groundwater mix will be the same across all of the lower fields that can be irrigate[d] with groundwater.

Specifically, as described in Section 2.1.4 of the Draft EIS:

These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739). This pump station was designed and built to be an emergency water source for the high-elevation fields in the event of extreme drought.

Thus, due to the amount of surface water being diverted under the Proposed Action, which is less than historically, and the crops proposed under the Mahi Pono farm plan, less brackish water can be used to supplement the surface water to irrigate the Central Maui agricultural fields.

Further discussed in Section 3.1.1.1 of the Draft EIS and supplemented with further analysis in the Final EIS as shown on pages 3-3 to 3-9, additional wells could be drilled to supplement the surface water however, there are often significant environmental impacts associated with well-drilling. Thus, the groundwater alternative was considered to be unreasonable and was dismissed from further review.

Regarding your comment about the hydrological dynamics, please note that as discussed in Section 4.2.2 of the Draft EIS:

Because so little is known about the relationship between system losses and irrigation return water and how much could be reused as groundwater, a definite statement about impacts on groundwater cannot be made. However, the use of East Maui surface water to irrigate the Central Maui fields has long supplemented the underlying aquifers, and a similar relationship will continue under the Proposed Action, essentially constituting a beneficial impact to the Central Maui aquifers, albeit at a smaller scale than when sugarcane was being cultivated.

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Comment 31: Alternatives Considered (Section 3.2)

In section 3.2, four additional alternatives are considered in addition to the preferred alternative:

1) Reduced water volume - As per section 3.2.1, the applicant wishes to divert the maximum 87.95 mgd of water allowed under the CWRM D&O in order to irrigate the maximum amount of acreage in central Maui. It is noted that even if this amount of water is allowed, it is only estimated to be sufficient to irrigate 23,000 acres of the 30,000 potentially available in this area for agriculture, and that the diversion allotment might be subsequently reduced by reservations for DHHL. As such, the applicant asserts that any long-term lease that permitted a lesser amount of water diversion would be inconsistent with their long-term objectives. In order to make up the shortfall in irrigation water, the applicant proposes to use well water, despite arguing against this approach in Section 3.1.

Response 31: You have a fundamental misunderstanding of what is described in Section 3.2.1 of the Draft EIS relative to the use of brackish water for irrigation. Water from brackish wells has long been a supplemental source of irrigation water for the Central Maui agricultural fields, notwithstanding the concurrent reliance upon the surface water from East Maui. See Draft EIS Section 2.1.4, explaining that the brackish water wells in Central Maui can supplement surface water to approximately 17,200 acres of the Central Maui agricultural fields. This arrangement is contemplated to continue under the Proposed Action, however, as noted in Response #30, because the amount of surface water from East Maui will be significantly less under the Proposed Action than it was in the past, and because the diversified agricultural farming plan proposed by Mahi Pono will not consist entirely of crops that are as salt tolerant as sugarcane, Mahi Pono will have less brackish irrigation water to rely upon than did HC&S during its sugarcane farming on the same land.

Regarding your comment about the amount of water available under the Proposed Action being sufficient to irrigate only 23,000 of the approximately 30,000 acres, please note that the State of Hawai'i Land Use Commission designated approximately 22,000 acres of the 30,000 acres of Central Maui agricultural fields owned by Mahi Pono as Important Agricultural Lands (IAL). The designation of IAL is determined based upon a number of factors, but such lands: (1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology; (2) Contribute to the State's economic base and produce agricultural commodities for export or local consumption; or (3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production. See HRS § 205-42.

As stated by the CWRM D&O, the CWRM estimated that the amount of water potentially available after implementation of the CWRM D&O might be enough for about 90% of the irrigation needs for the approximately 22,000 IAL lands in Central Maui. Specifically, Section 3.2.1 of the Draft EIS states:

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The BLNR cannot authorize a lease that allows the use of more water than can be diverted under the CWRM D&O. However, the BLNR could elect to issue a water lease that authorizes the use of a lesser amount of water. Projections of the amount of government water available from the License Area at Honopou stream after taking into account the CWRM D&O, is approximately 87.95 mgd. This amount would be subject to further reduction in accordance with the DHHL reservation once called upon for use by the DHHL. The CWRM estimated that the amount of water potentially available after implementation of the CWRM D&O might be enough for about 90% of the irrigation needs for the approximately 23,000 IAL lands in Central Maui (although it is not clear if the CWRM D&O took into account the future DHHL reservation). However, there are approximately 30,000 agricultural acres in Central Maui (largely, but not exclusively, IAL lands), and Mahi Pono has expressed an intention to farm as much of that land as possible.

Hence, there are 30,000 acres total, all of which are not exclusively IAL lands and Mahi Pono intends to farm all 30,000 acres as discussed in Section 2.1.4 of the Draft EIS. Specifically, Table 2-2 discusses the acreage breakdown, of which approximately 9,100 acres is anticipated to be “Unirrigated Pasture” land. However, please note that the above has been corrected to state that there are approximately 22,000 acres designated as IAL lands, not 23,000 acres as was stated in the Draft EIS, as shown on page 3-21.

Comment 32: 2) *Water lease with different terms - In section 3.2.2.1, the applicant also asserts that any water lease of a duration shorter than 30 years could inhibit their ability to obtain financing for agricultural operations in central Maui, which would again be inconsistent with their objectives. The Service proposes that a 30-year lease with slightly different increments of diversion could in fact be viable (see new proposed Alternative 5 below).*

Response 32: Please note that the terms and conditions of the Water Lease are at the discretion of the BLNR. Should BLNR approve a Water Lease with a term as you suggest that is accepted by the lessee, the lessee will comply with all terms and conditions of the Water Lease. However, please note as discussed in Section 2.1.5 of the Draft EIS, it will take more than ten years for the Mahi Pono farm plan to reach full buildout. Hence, it is assumed that not all of the available water will be immediately diverted but rather will be diverted as needed in accordance with Mahi Pono’s incrementally growing farm activity.

Moreover, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private Central Maui Field Irrigation System in Central Maui (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. These new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all

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water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Reducing water usage through effective irrigation ensures conservation of Hawai'i's natural resources. Please note that this information has been added to Section 2.1.4 of the Final EIS, as shown on page 2-25, as well as other sections when discussed.

Regarding the USFWS proposed alternative 5, the Draft EIS included an analysis of two alternatives that encompass what the USFWS is proposing: the Reduced Water Volume alternative and the Water Lease with Alternative Lease Duration alternative, discussed in Sections 3.2.1 and 3.2.2.1 of the EIS, respectively.

Comment 33: *3) Modified lease area - In section 3.2.2.2, the applicant notes that the BLNR has discretion to limit the geographic parameters of the lease to an area smaller than that currently proposed, and that this would not necessarily be inconsistent with the objectives of the Proposed Action. Given the higher quality of biological resources at the eastern end of the EMI system, the Service continues to support a Modified Lease Area alternative that concentrates surface water diversions in the more western Huelo and Honomanu license areas, with the more eastern Keanae and Nahiku license areas being utilized secondarily (see new proposed Alternative 5 below).*

Response 33: If your reference to a smaller lease area implies reduced access to streams, we disagree that this “would not necessarily be inconsistent with the objectives of the Proposed Action.” The EMI Aqueduct System traverses many different micro-climates within the East Maui watershed. In general, mean annual rainfall in the watersheds of East Maui increase with land elevation and, at the same elevation, decreases moving westward. The EMI Aqueduct System is at its highest elevation at its eastern end and decreases in elevation going westward. Therefore, the overall potential for available water in streams at the diversions is highest in the east and declines with elevation and direction moving westward.

Rainfall amounts also depend on weather conditions, as often times rainfall may be occurring in one sector of the EMI Aqueduct System and not in another. Farming needs a consistent source of irrigation water once a crop is planted and throughout its useful life. It would indeed be limiting on Mahi Pono's ability to farm and to increase its farmed acreage if its source of water was limited by geography to only a portion of the streams. EMI needs the flexibility to operate the EMI Aqueduct System most effectively to provide the water needed for uses described in the EIS.

Please note as discussed in Response #15 above that the CWRM D&O restored flow to the majority of the streams within the Nāhiku and Ke'anae portions of the License Area. Thus, the higher quality biological resources have been provided added protection, even under the Proposed Action.

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The Modified Lease Area alternative that is discussed in the Draft EIS and further expanded on in the Final EIS refers to a smaller land area that would allow for more public access into the License Area while maintaining sufficient area within the License Area to ensure continued access for the operation and maintenance of the EMI Aqueduct System and to ensure safety of the system since it is a source of public drinking water, as well as safety of the EMI employees. Access to the streams will remain the same, in compliance with the CWRM IIFS decision. Under the “Modified Lease Area” alternative assessed in Section 3.2.2.2 the Draft EIS, it is assumed that access to and uses within the State-owned land that is outside of a smaller License Area would be managed by the State (presumably, DOFAW). DOFAW has not indicated how it intends to regulate those lands. Should there be greater public access to the License Area than currently exists, pursuant to the analysis in Section 3.2.2.2 of the EIS and Appendix C, it is anticipated that there may be an increased introduction or spreading of invasive species within these areas. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24, pages 3-32 to 3-34, and 3-44 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the impacts from experiencing an increase in public access in the License Area.

Section 1.3.1 and 3.2.2.2 of the Final EIS have also been updated to acknowledge that under the water RPs issued for 2020 and approved for 2021, the Hanawā NAR was removed from the License Area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased impacts to flora and fauna resources, but that will ultimately depend on if and when increased access takes place.

Comment 34: *4) No action - Under this alternative, the applicant would continue to divert up to 80 mgd of water from the 4 state lease areas under a continuing series of one-year revocable permits. The Service considers this alternative inadvisable given that recent court decisions have judged this practice of using an indefinite series of short-term permits as substitutes for long-term leases to be illegal. Additionally, this alternative does not adequately address potential project impacts to trust resources and endangered species.*

Response 34: Your description of the No Action alternative is not consistent with what was presented in the Draft EIS. The Draft EIS No Action alternative assumes that no Water Lease (or other permit authorizing the use of East Maui stream water from the State's land) would be authorized. Under that scenario it is estimated that the applicant could continue to divert only approximately 26.39 mgd from the License Area. Specifically, Section 3.3 of the Draft EIS states:

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Under a 1938 agreement between the Territory of Hawai‘i and A&B, A&B was given a perpetual right and easement to convey water through those portions of the EMI Aqueduct System located within State lands, and to divert the water so conveyed through the EMI Aqueduct System, and A&B granted the Territory a similar perpetual right and easement. This agreement is in place irrespective of the issuance of any Water Lease. The No Action alternative would result in no Water Lease being issued from the State. However, under the 1938 agreement and a related calculation involving isohyet analysis of rainfall patterns, it is understood that approximately 30% of the water in the License Area streams is derived from the privately owned lands.

Therefore, the EMI Aqueduct System could continue to divert approximately 30% of the water available from the Collection Area, plus the 4.37 mgd from that portion of the Collection Area that is derived from privately owned lands outside of the License Area between Honopou stream and Māliko Gulch. Under the No Action alternative, it is assumed that an estimated total of 26.39 mgd is available to be diverted from that portion of the Collection Area east of Honopou stream, and approximately 4.37 mgd of surface water would be available from privately owned lands (i.e. not within the License Area) between Honopou stream and Māliko Gulch. Thus, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System under the No Action alternative would be approximately 30.76 mgd (Akinaka, 2019).

Please note that Section 3.3 of the Final EIS has been updated to include additional information on the 1938 Agreement, as shown on pages 3-24 to 3-25

Regarding your comment that Section 3.3 of the Draft EIS does not adequately address potential project impacts to trust resources and endangered species, note that the comparative analysis of the reasonable alternatives, including the No Action alternative, is set forth in Section 3.4 of the Draft EIS and Final EIS, which describes the impacts of the alternatives.

Comment 35: Additional Alternative to be Considered

Given the considerations outlined above, the Service suggests that an additional hybrid alternative be evaluated in the FEIS, consisting of a 30-year lease with a gradually increasing diversion allotment, contingent upon demonstrated need, with the later increments of this diversion being obtained from points of diversion progressively further east along the EMI aqueduct system.

Specifically, the Service proposes that the FEIS evaluate an additional alternative consisting of a 30-year lease with an initial ceiling of 48 mgd taken from catchments in the Huelo and Honomanu license areas west of the Koolau Gap, with future options, upon proof of need and subject to approval by the BLNR, for two additional diversion increments of 20 mgd each, to be drawn from catchments successively further east in the Keanae and Nahiku license areas. This would provide a potential withdrawal of up to 88 mgd of diversion from the state license areas,

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as currently allowed under the CWRM D&O, but at the same time retain water in streams for public trust purposes until such time as the needs for offstream uses in Central Maui were demonstrated to the BLNR.

The above proposal is consistent with previous comments by the Service in its letter of February 20, 2016. On page 2-19 of the current DEIS, it is estimated that it will require 10 years to fully implement the Mahi Pono farm plan on 30,000 acres of former sugarcane lands. Since this conversion will not be instantaneous, it is clear that the amount of water diverted from the State lease areas will gradually ramp up over time, presuming no unanticipated delays or changes to the business model intervene. In its previous letter, the Service suggested using a phased approach to the water lease, with incrementally larger amounts of diversion being allowed as the demand for such was demonstrated, noting that it would also be consistent with the Hawaii State Water Code. The Service notes that this approach was not evaluated in the current DEIS, and so reiterates this suggestion for the FEIS.

Response 35: We acknowledge your comments and we appreciate the thought you put into them. However, please note that your alternative does not take into account the challenges and requirements of establishing a large scale diversified agricultural operation, the requirements of being relied upon as a public/community water source, nor the logistics of operating a system such as the EMI Aqueduct System to meet these needs. The hybrid proposal will therefore not meet the objectives of the Proposed Action.

As discussed in Response #33 above, the terms and conditions of the Water Lease are at the discretion of the BLNR. Should BLNR impose terms such as you suggest, it will be up to the proposed lessee as to whether they can comply with all terms and conditions of the Water Lease. If the terms are infeasible for the Proposed Action, a lease will not be entered into for the purpose of returning Central Maui to agriculture. However, please note as discussed in Section 2.1.5 of the Draft EIS, it will take more than ten years for the Mahi Pono farm plan to reach full buildout. Hence, not all of the available water will be immediately diverted but rather will be diverted as needed as determined by Mahi Pono's level of farming activity. Thus, in effect, the Proposed Action results in gradually increasing diversion of stream waters, as you propose—but limited by which streams water can be diverted from at any given time, other than to comply with the IIFS requirements under the CWRM D&O, which acts to protect streams of highest importance in the License Area while supporting the actual cultivation of the constitutionally mandated IAL's in Central Maui.

Furthermore, as discussed in Response #33 above, the Draft EIS included an analysis of two alternatives that encompass what the USFWS is proposing: the Reduced Water Volume alternative and the Water Lease with Alternative Lease Duration alternative, discussed in Sections 3.2.1 and 3.2.2.1 of the EIS, respectively. The Final EIS includes a "sliding scale" analysis of the impacts of the proposed Water Lease being issued but permitting water diversions in an amount less than what is allowed under the CWRM D&O in Section 3.2.1 of the Draft EIS. The sliding scale quantifies effects based upon each 1 mgd reduction in water, and

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therefore provides the analytical framework for assessing the impacts of a Water Lease less than the Proposed Action. For each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

Comment 36: *The Service further notes that the DEIS estimates annual maintenance costs on the EMI aqueduct system will run on the order of \$2.5 million per year. A recent visit by Service staff to various portions of the EMI system in May 2019, in company with staff from the Hawaii Department of Land and Natural Resources, led to the observation that many sections of the system are already being blocked by treefalls and land slips, and that there was apparently no diversion of water in the system anywhere east of Puohokamoa Stream. This indicates that a significant portion of the system east of Koolau Gap is idle, that a large amount of maintenance on the ditch system has already been deferred, and that a major investment may be necessary to bring it back to its former level of operation.*

Response 36: Regarding your comment about the annual maintenance costs on the EMI Aqueduct System, please refer to Response #8 above.

Regarding your comments about a visit in May 2019 where USFWS observed that various sections of the EMI Aqueduct System were blocked by treefalls and land slips, EMI continually conducts maintenance and repair activities which involve keeping the waterways clear of trees, weeds, rocks, dirt and anything that will potentially impede the flow of water. This includes not only in ditches, but in tunnels and flumes as well. Some activities are performed by hand and other activities require small tractors and or specialized equipment. While EMI continually maintains the EMI Aqueduct System, the more utilized portions of the system are maintained more frequently than other portions. EMI evaluates areas of the EMI Aqueduct System regularly to identify where maintenance / repair activities are necessary and adds them to a list of maintenance projects. Please note that your May 2019 visit provided only a snapshot of the activity associated with the EMI Aqueduct System. The areas visited during the May 2019 visit with DOFAW focused on only a portion of the EMI Aqueduct System, primarily on locations where diversion activity had been suspended in part due to compliance with the CWRM D&O or temporarily suspended, due to low levels of water need on the Mahi Pono farm at that time. As noted in the Draft EIS, EMI will only divert the amount of water needed to deliver water to the County of Maui MDWS and for Mahi Pono farm plan needs at any given time. However, as Mahi Pono continues to expand its farming activities in Central Maui, as planned, the need for East Maui water will increase and diversions from streams east of Puohokamoa will ultimately resume, as allowed by the CWRM IIFS decision. The longer-term maintenance plan for the EMI Aqueduct System takes this phased incremental increase in the use of diversions into consideration, in its effort to ensure the entire EMI Aqueduct System remains efficiently functional. Moreover, in response to the Draft EIS comments regarding the condition of the EMI Aqueduct System, EMI staff have been conducting sweeps to locate / remove unnecessary ditch

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debris from the License Area. Section 2.1.2 of the Final EIS has been revised to include this discussion as shown on page 2-7.

Comment 37: *Given a 10-year deployment of the associated farm plan, this also indicates that a large initial dollar investment will need to be made up-front for many years just to keep the system operational, in anticipation of future returns as the diversified agricultural operation is built out. Such a scenario comes with major uncertainties in regard to supply, demand, and macroeconomic cycles, thus the it is the Service's position that a lease for a modest amount of initial water delivery, coupled with future options for incrementally stepped up deliveries based on outcomes and need, is a more logical approach, and that such an alternative should be analyzed in the FEIS. This approach would also have the benefit of maximizing interim instream flows and associated ecological functions in the near term.*

Response 37: As noted in prior responses, your assumptions about the condition of the EMI Aqueduct System are misconstrued. The EMI Aqueduct System is in good working condition and EMI conducts regular maintenance on the system to keep it operating well. Therefore, a large initial dollar investment is not required up-front to keep the EMI Aqueduct System in good working order. Please note that the maintenance and repair costs associated with the EMI Aqueduct System are relatively constant as discussed in Section 4.7.3 of the Draft EIS. Specifically, Section 4.7.3 of the Draft EIS states:

Due to the nature of the EMI Aqueduct System, the operational costs are largely fixed, with minimal variable costs. Future operational costs for the EMI Aqueduct System are anticipated to be similar to the average cost experienced during the recent sugar operations period (2008-2013), with the only variation being the amount of the Water Lease payments owed to the State.

Regarding the Central Maui Field Irrigation System within the agricultural fields, as discussed in Response #33 above, Mahi Pono expects to invest over \$20 million to increase the efficiency of that private system. This investment is to improve water use efficiencies. However, it is not anticipated that large initial dollar investments are required up-front to keep the Central Maui Field Irrigation System operational as you suggest in Comment #37 above.

Furthermore, as discussed in Responses #33 and 35 above, the alternative that USFWS suggests is within the range of alternatives considered in the EIS.

Comment 38: Comparative evaluation of reasonable alternatives (Section 3.4)

In regard to section 3.4, where the potential impacts of the various alternatives are compared, the Service has the following comments:

1) Coastal Waters (Section 3.4.5)

In this section on page 3-9, it is stated that neither the proposed action or any of the various alternatives would impact the coastal waters of East Maui, because the ocean environment is

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not affected by the intensity of stream flow, being so much larger. The Service considers analysis to be overly simplistic, because it overlooks the role that stream inflows play in regard to the delivery of land-based nutrient inputs to nearshore waters, and the associated positive effects on fisheries recruitment, particularly in oligotrophic tropical seas such as those surrounding the Hawaiian Islands. This topic needs to be addressed in the FEIS, and the superficial treatment of coastal water interactions with stream inflows needs to be examined in much greater detail.

Response 38: Regarding your comment about the Proposed Action and associated alternatives not having an impact on coastal water in East Maui, this is addressed by the Draft EIS in Section 4.2.3, which summarizes the stream and ocean water chemistry assessment conducted by Sea Engineering, Inc. (SE) and Marine Research Consultants, Inc. (MRC) in Appendix B. The collected data presented in Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. The entire purpose of the marine studies that were performed as part of this EIS was to quantify the degree of mixing of nutrients from stream waters within coastal waters. It is likely this work is the most comprehensive evaluation of such mixing ever performed on accessible East Maui Streams and cannot be considered “overly simplistic.” It is also established that by definition “oligotrophic tropical seas” contain very low nutrient concentrations, owing to lack of inputs from land. The oligotrophic zone is generally considered the open ocean. As such, such areas of the open ocean are physically separated from coastal ocean areas, which are influenced by input from land. Equating the effects of inputs of stream borne materials to the oligotrophic ocean is by definition, not a realistic consideration.

We recognize that land-based nutrient inputs to nearshore waters generally have a positive impact on fisheries. The greatest event-related nutrient input from streams in East Maui occurs during periodic but brief freshet flows that occur during wet-weather conditions. Those freshet flows, however, are orders of magnitude greater than the amount of water that can be diverted when they occur. Hence, nutrient delivery during these events would not be affected by the diversions. The collected data presented in Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, because the nutrient concentrations in the ocean do not change substantially due to stream diversions as proposed under the Water Lease, the Proposed Action is not anticipated to have negative impacts on fisheries.

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species (‘O‘opu naniha (*Stenogobius hawaiiensis*), ‘O‘opu akupa (*Eleotris sandvicensis*))

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and ‘Ōpae ‘oeha‘a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi‘ina‘au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa‘akea will have connectivity flow restoration, while ‘O‘opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi‘ina‘au Stream) have estuarine reaches, four of which were noted by Trutta’s HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR’s methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi‘ina‘au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa‘akea) have connectivity flow restoration ordered. Pa‘akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83 of the Final EIS.

Comment 39: *b) Flora, Fauna and Invertebrates (Section 3.4.8)*

The DEIS contends that modifying the lease area could result in greater public access, which would result in trampling and other impacts to the existing flora. In addition, significant concerns are raised about the possible introduction of invasive weeds. The Service notes, however, that the majority of the vegetation surrounding the EMI ditch system and its access

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roads is overwhelmingly dominated by invasive non-native plant species, the trampling or disturbance of which would present minimal concern, and that any weeds that might be transported into the license area by members of the public are already present and proliferating. As such, the potential biological impacts related additional public access to this area do not appear to be a reasonable basis for rejection of the Modified Lease Area alternative.

Response 39: To clarify, and as discussed in Section 3.2.2.2 of the Draft EIS, the BLNR has the discretion to set the geographic parameters of the License Area to one that is smaller than what is currently presented as the Proposed Action. However, the geographic extent of the License Area would need to ensure the operation and maintenance of the EMI Aqueduct System with appropriate buffers to ensure public safety, the safety of EMI employees, as well as the security of the EMI Aqueduct System which is a source of public drinking water. As such, the areas you identify as being dominated by invasive species (areas around the EMI Aqueduct System and its accessways) would not be those, for the most part, that would be opened up to the general public. Those areas would continue to be utilized by EMI staff for maintenance and operation of the EMI Aqueduct System.

Under the “Modified Lease Area” alternative assessed in Section 3.2.2.2 of the Draft EIS, it is assumed that access to and uses within the State-owned land that may no longer be part of a more limited Water Lease area would be managed by the State (presumably, DOFAW). DOFAW has not indicated how it intends to regulate those lands. As discussed in Section 3.4.8 of the Draft EIS, should there be greater public access to the License Area than currently exists, it is anticipated that there may be an increased introduction or spreading of invasive species to these areas. Please note that the discussion in Section 3.4.8 of the Final EIS has been expanded to discuss impacts from greater public access in more detail as shown on page 3-32.

Comment 40: *4.2.1 Surface Waters (4-54)*

Given that the HEP model was originally developed by the Service, we consider the version tailored to Hawaiian stream ecosystems, HSHEP, to be a valid tool for estimating gains or losses of stream habitat and function related to varying diversion scenarios as used in the DEIS. As noted in section 4.2.1, this model's results indicate that the proposed action will have a negative impact by reducing stream flow from that prevailing under natural, undiverted conditions. The Service acknowledges that it is the mandate of Hawaii CWRM to balance the loss of such instream uses with the needs of offstream users. However, the Service also notes that under HRS 174C, agricultural diversions are not considered a public trust use. As stated by the Hawaii State Supreme Court in its Waiahole Ditch decision of August 22, 2000: "Although its purpose has evolved over time, the public trust has never been understood to safeguard rights of exclusive use for private commercial gain."

The current CWRM D&O has resulted in the restoration of significant amounts of flowing stream habitat in East Maui, and the Service finds this commendable. However, as noted on page 4-58 of the DEIS, lateral entrainment and out-of-basin export by the ditch system of

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migratory diadromous biota, such as fishes and prawns, remains a significant issue. The Service recommends that the FEIS discuss in greater detail what steps might be taken to minimize such entrainment at the points of diversion, so as to allow the fullest possible utilization of the restored habitat by native organisms, and thereby reduce the biological impacts of the proposed action.

Response 40: We appreciate your acknowledgement of the HSHEP model. We question, however, your characterization of HRS Chapter 174C, the State Water Code, as it relates to agricultural use of water. Please note that the State Water Code does not list public trust uses of water, nor is it stated anywhere in the code that the agricultural use of water is not a public trust use. In fact, HRS § 174C-2(c) declares the use of water for agriculture as being in the public interest, per below:

HRS § 174C-2 Declaration of Policy.

*(c) The state water code shall be liberally interpreted to obtain maximum beneficial use of waters of the State for purposes such as domestic uses, aquaculture uses, **irrigation and other agricultural uses**, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, **agriculture and navigation. Such objectives are declared to be in the public interest.** (emphasis added)*

Contrary to your comment, the State Water Code clearly includes agricultural use of water as in the public interest and part of the balance with instream uses.

As for your reference to the Waiahole Ditch decision, please note that the Hawai'i Supreme Court in said decision also stated the following:

We have indicated a preference for accommodating both instream and offstream uses where feasible. . . . In times of greater scarcity, however, the state will confront difficult choices that may not lend themselves to formulaic solutions. Given the diverse and not necessarily complementary range of water uses, even among public trust uses alone, we consider it neither feasible nor prudent to designate absolute priorities between broad categories of uses under the water resources trust. Contrary to the Commission's conclusion that the trust establishes resource protection as "a categorical imperative and the precondition to all subsequent considerations," we hold that the Commission inevitably must weigh competing public and private water uses on a case-by-case basis, according to any appropriate standards provided by law.

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In re Water Use Permit Applications ("Waiahole I"), 94 Hawai‘i 97, 142, 9 P.3d 409, 454 (2000).

The state also bears and “affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.” Preliminarily, we note that this duty may not readily translate into substantive results. The public has a definite interest in the development and use of water resources for various reasonable and beneficial public and private offstream purposes, including agriculture[.] Therefore, apart from the question of historical practice, reason and necessity dictate that the public trust may have to accommodate offstream diversions inconsistent with the mandate of protection, to the unavoidable impairment of public instream uses and values. . . . [B]y conditioning use and development on resource “conservation,” article XI, section 1 does not preclude offstream use, but merely requires that all uses, offstream or instream, public or private, promote the best economic and social interests of the people of this state. In the words of another court, “[t]he result . . . is a controlled development of resources rather than no development.”

Waiahole I, 94 Hawai‘i at 141, 9 P.3d at 453.

Thus, under article XI, section 1 of the Hawai‘i Constitution, the Proposed Action is an appropriate use of public waters which would allow the state to both protect water resources while allowing a use of water that is in the best economic and social interests of the people of the state, whether it is a public or private use of the water resource. Please note that Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine and public trust resources as shown on pages 1-25 to 1-27.

We agree that the IIFS requirements under the CWRM D&O have resulted in the restoration of significant amounts of flowing stream habitat. As noted in the HSHEP report, "Overall, the analysis resulting from the combination of field surveys and habitat modeling supports the flow restoration under the CWRM D&O 2018 IIFS in improving habitat conditions for native amphidromous stream animals." The HSHEP model focuses on changes in instream habitat, entrainment or barriers to passage for these migratory native stream species with respect to modifications of the stream environment. In the case of the East Maui streams covered by the Draft EIS, the primary impact (i.e., cause of entrainment) is streamflow diversion. Any changes to stream habitat arising from diversion structures are minuscule in comparison to the loss of habitat that arises from dewatered streams. Thus, the primary mitigation measure is flow restoration (the greater percentages of total streamflow diverted generally resulted in lower amounts of instream habitat for native stream species). The HSHEP modeling intent was to quantify the flow restoration effect on the native stream species. Thus, the results of the HSHEP model document mitigation measures to restore native stream life to various restoration targets. Appendix A to the EIS also recognizes other potential mitigation factors, such as engineering

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changes to increase fish passage and decrease larval entrainment, diversion locations, and the number of diversions.

Regarding your question about what steps can be taken to minimize entrainment at the points of diversion, as discussed in Appendix A to the EIS, and summarized in EIS Section 4.2.1, updated as shown on pages 4-63 to 4-67 of the Final EIS, given the 250+ diversions within the EMI Aqueduct System, incremental changes to each aspect of diversion amount on habitat, entrainment, and passage for each diversion individually and all diversion combinations would result in too many model results for rational use (the number of possible combinations with just one change at each diversion is far over a billion different results, $2^{250}-1 = \text{combinations}$). Therefore, the HSHEP model discusses general guiding concepts associated with flow modification and changes to diversion design to minimize barriers to passage and larval entrainment:

With respect to diversion location:

- When comparing the location of a diversion, diverting comparable amounts of water at higher elevation diversions was less damaging to instream habitat for native stream species than diverting that water at lower elevation diversions.

With respect to a single diversion in comparison to multiple diversions:

- A single diversion at the upstream most diversion location capturing X amount of stream flow will result in more instream habitat than multiple stream diversions throughout the stream diverting the same amount of stream flow in total (sum of multiple diversions = X). The lower amount of total habitat under the partial water diversion at multiple diversions was the result of compounding impact on entrainment/passage barriers at each diversion.

With respect to modifications of the diversion for improved passage and decreased entrainment:

- Improvements in diversion passage resulted in more suitable habitat at most flow levels.
- At lower flow restoration amounts, modifications to improve passage resulted in greater gains in suitable habitat than at higher flow restoration level.

As discussed in Section 4.2 and Appendix A of the EIS, it was not possible to model every scenario and determine the “optimal” solution within the complex East Maui Irrigation system and thus the above are guiding concepts which may allow more specific actions to be determined as broader flow modification quantities are determined.

Comment 41: Biosecurity Provisions

While much of the ditch system and access roads are in areas where non-native species and ecosystems predominate, native forest is found in many locations of the system and the access roads and ditch are adjacent to native-dominated habitats upslope. As such, biosecurity is

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*important to minimize movement of particularly noxious pests and threats into these areas. Two of the more recent concerns that should be addressed include Rapid Ohia Death and little fire ants (*Wasmannia auropunctata*). Little fire ants have been found in many areas of Maui, including Huelo, Haiku, and Nahiku on the north side of the island (<https://mauiinvasive.org/little-fire-ant/>). Similarly, Rapid Ohia Death caused by two species of fungal pathogens was first found on Maui in 2019 in a single tree on East Maui. It is important to prevent the spread of both of these invasive species into more intact native forests through adequate biosecurity. The following are recommendations for appropriate response to these and other invasive species that could be used to develop an appropriate biosecurity plan.*

- ***All work vehicles, machinery, and equipment should be cleaned, inspected by its user, and found free of mud, dirt, debris and invasive species prior to entry into the natural areas or native habitat.***
 - a. *Vehicles, machinery, and equipment must be thoroughly pressure washed in a designated cleaning area and visibly free of mud, dirt, plant debris, insects, frogs (including frog eggs) and other vertebrate species such as rats, mice and non-vegetative debris. A hot water wash is preferred. Areas of particular concern include bumpers, grills, hood compartments, areas under the battery, wheel wells, undercarriage, cabs, and truck beds (truck beds with accumulated material (intentionally placed or fallen from trees) are prime sites for hitchhikers).*
 - b. *The interior and exterior of vehicles, machinery, and equipment must be free of rubbish and food. The interiors of vehicles and the cabs of machinery must be vacuumed clean. Floor mats shall be sanitized with a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution.*
 - c. *Any machinery, vehicles, equipment, or other supplies found to be infested with ants (or other invasive species) must not enter natural areas or native habitat. Treatment is the responsibility of the equipment or vehicle owner and operator.*

Response 41: We acknowledge your comments above and they have been taken into consideration. Please note that the above recommendations in Comment #41 are generally discussed in Section 4.4.1 of the Draft EIS. Specifically, Section 4.4.1 of the Draft EIS recommended the following mitigation measure:

- *To avoid the introduction or transport of new invasive plant species into more pristine portions of the License Area during EMI Aqueduct System maintenance activities, all equipment and vehicles arriving from outside the License Area should be washed and inspected prior to any maintenance activities on cliff sides, near waterfalls, and in other native species-dominated areas in the License Area. Such washing and inspecting should be done at a designated location.*

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However, please note that Section 4.4.1 of the Final EIS has been revised to include more targeted discussions regarding mitigation measures to prevent the transport of invasive species into the License Area as recommended by the USFWS as shown on pages 4-121 to 4-124.

Comment 42: 2. Little Fire Ants -All work vehicles, machinery, and equipment should be inspected for invasive ants prior to entering the natural areas or native habitat.

A visual inspection for little fire ants should be conducted prior to entry into natural areas or native habitat.

- *Hygiene is paramount but even the cleanest vehicle can pick up a little fire ant. Place MaxForce Complete Brand Granular Insect Bait (1.0% Hydramethylnon; <http://littlefireants.com/Maxforcc.com/Maxforcc%20Complctc.pd20Complctc.pd00>) into refillable tamper resistant bait stations. An example of a commercially available refillable tamper resistant bait station is the Ant Cafe Pro (<https://www.antcafc.com/>). Place a bait station (or stations) in vehicle. Note larger vehicles, such as trucks, may require multiple stations. Monitor bait stations frequently (every week at a minimum) and replace bait as needed. If the station does not have a sticker to identify the contents, apply a sticker listing contents to the station.*
- *Any machinery, vehicles, equipment, or other supplies found to be infested with ants (or other invasive species) must not enter natural areas or native habitat until it is sanitized and re-tested following a resting period. Infested vehicles must be sanitized following recommendations by the Hawaii Ant Lab (<http://www.littlefireants.com/>) or other ant control expert and in accordance with all State and Federal laws. Treatment is the responsibility of the equipment or vehicle owner.*
- *Gravel, building materials, or other equipment such as portable buildings should be baited using MaxForce Complete Brand Granular Insect Bait (1.0% Hydramethylnon; <http://littlefireants.com/Maxforcc%20Complctc.pd00>) or AmdroProAmdroPro ((0.73%0.73% HydramethylnonHydramethylnon ; ; <http://littlefireants.com/Amdro%20Pro.pdt>) following label guidance.*
- *Storage areas that hold field tools, especially tents, tarps, and clothing should be baited using MaxForce Complete Brand Granular Insect Bait (1.0% Hydramethylnon; <http://littlefireants.com/Maxforcc%20Complctc.pd20Complctc.pd00>) To avoid the introduction or transport of new invasive plant species into more pristine portions of the License Area during EMI Aqueduct System maintenance activities, all equipment and vehicles arriving from outside the License Area should be washed and inspected prior to any maintenance activities on cliff sides, near waterfalls, and in other native species-dominated areas in the License Area. Such washing and inspecting should be done at a designated location.*
- *AmdroProAmdroPro ((0.73%0.73% HydramethylnonHydramethylnon ; ; <http://littlefireants.com/Amdro%20Pro.pdt>) following label guidance.*

Response 42: We acknowledge your comments above and they have been taken into consideration. Note that the Draft EIS did not discuss any targeted mitigation or avoidance measures as it relates to little fire ants but was generally discussed to deal with all invasive species. However, it is recognized the little fire ants are an issue in East Maui as recognized by

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the Hawai'i Invasive Species Council. Please note that Section 4.4.2 of the Final EIS has been revised as shown on page 4-129 to include a target mitigation measure regarding little fire ants as recommended by the USFWS.

Comment 43: *3. Base yards and staging areas inside and outside areas must be kept free of invasive species.*

- *Base yards and staging areas should be inspected at least weekly for invasive species and any found invasive removed immediately. Pay particular attention to where vehicles are parked overnight, keeping areas within 10-meters of vehicles free of debris. Parking on pavement and not under trees, while not always practical is best.*
- *Project vehicles or equipment stored outside of a base yard or staging area, such as a private residence, should be kept in a pest free area.*

Response 43: Please note that the above recommendation in Comment #43 is generally discussed in Section 4.4.1 of the Draft EIS as noted in Response #41 above. However, please note that Section 4.4.1 of the Final EIS has been revised to include more targeted discussions on mitigation measures for invasive species as recommended by the USFWS as shown on pages 4-121 to 4-124.

Comment 44: *All cutting tools must be sanitized to prevent the Rapid 'Ohi'a Death (ROD) fungus.*

- *Avoid wounding 'ohi'a trees and roots with mowers, chainsaws, weed eaters, and other tools. Cut only the minimum amount of trees and branches as approved for the project.*
- *All cutting tools, including machetes, chainsaws, and loppers must be sanitized to remove visible dirt and other contaminants prior to entry into natural areas or areas with native habitat, and when moving to a new project area within the native habitat area. Tools may be sanitized using a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution. One minute after sanitizing, you may apply an oil based lubricant to chainsaw chains or other metallic parts to prevent corrosion.*
- *Only dedicated tools and chainsaws should be used to sample known or suspected ROD infected trees.*
- *Vehicles, machinery, and equipment must be cleaned as described in (1) above.*

Response 44: We acknowledge your comments above and they have been taken into consideration. Note that the Draft EIS did not discuss any targeted mitigation or avoidance measures as it relates to cutting tools and Rapid 'Ōhi'a Death (ROD) fungus. Please note that Section 4.4.1 of the Final EIS has been revised to include the above recommendation as shown on 4-122 to 4-123.

Comment 45: *Imported firewood, logs, and 'ohi'a parts:*

- *'Ohi'a firewood, 'ohi'a logs, and 'ohi'a parts should not be transported.*

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Response 45: We acknowledge your comments above and they have been taken into consideration. Note that the Draft EIS did not discuss any targeted mitigation or avoidance measures as it relates to ‘Ōhi‘a firewood, logs, and parts. Please note that Section 4.4.1 of the Final EIS has been revised to include the above recommendation as shown on page 4-123.

Comment 46: *For individuals working in the field:*

- *Before going into the field, visually inspect and clean your clothes, boots, pack, radio harness, tools and other personal gear and equipment, for seeds, soil, plant parts, insects, and other debris. A small brush is handy for cleaning boots, equipment and gear. Soles of shoes should be sanitized using a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution.*
- *Immediately before leaving the field, visually inspect and clean your clothes, boots, pack, radio harness, tools, and other personnel gear and equipment, for seeds, soil, plant parts, insects, and other debris. Soles of shoes should be sanitized using a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution.*
- *Little fire ants nest in trees. If you are under a tree and that tree is bumped or somehow stressed, the threat response of the ants is to fall from the leaves and sting the person under the tree. If you are subject to an ant-attack, do not panic. The ants are extremely small but their stings are painful so make sure you remove all ants from your body and clothing. The stings cause inch long welts that are itchy and painful, and can last for weeks. Treat stings as you would other insect stings. In some persons stings can produce life threatening reactions. Stocking antihistamine in the first aid kit is a reasonable precaution.*

Response 46: We acknowledge your comments above and they have been taken into consideration. Please note that the above recommendations in Comment #46 are generally discussed in Section 4.4.1 of the Draft EIS. Specifically, Section 4.4.1 of the Draft EIS states:

However, to the extent that maintenance activities are undertaken within the License Area in pristine areas, such as on cliffsides, nears waterfalls, or in other native species dominated areas, the following avoidance and minimization measures are recommended:

- *A qualified biological monitor should be on site to ensure that no listed or candidate species are impacted.*
- *The monitor should have familiarity with the plants of the area, including special-status species, familiarity with natural communities of the area, including special-status natural communities, experience conducting floristic field surveys, and experience with analyzing impacts of development on native plant species and natural communities*

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- *To avoid the introduction or transport of new invasive plant species into more pristine portions of the License Area during EMI Aqueduct System maintenance activities, all equipment and vehicles arriving from outside the License Area should be washed and inspected prior to any maintenance activities on cliff sides, near waterfalls, and in other native species-dominated areas in the License Area. Such washing and inspecting should be done at a designated location.*

However, please note that Section 4.4.1 of the Final EIS has been revised to include more targeted discussions as recommended by the USFWS as shown on page 4-129. As it relates to little fire ants, please see Response #42 above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

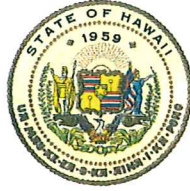
cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Nakamura, Darlene K <darlene.k.nakamura@hawaii.gov>
Sent: Wednesday, November 6, 2019 9:22 AM
To: Public Comment
Cc: Hirokawa, Ian C; Kaanehe, Blue; Yasaka, Lauren E
Subject: Request for Comments - East Maui Irrigation Company, Limited (EMI)
Attachments: East Maui Irrigation 11.5.19.pdf

Attached are comments from the Hawaii Department of Land and Natural Resources to the above-entitled subject project.

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 5, 2019

Wilson Okamoto Corporation
Attn: Mr. Earl Matsukawa
1907 South Beretania Street, Suite 400
Honolulu, Hawaii 96826

via email: waterleaseeis@wilsonokamoto.com

Dear Mr. Matsukawa:

SUBJECT: Draft Environmental Impact Statement for the Proposed Water Lease located at Nahiku, Keanae, Honomanu, and Huelo License Areas, Island of Maui; TMK Nos.: (2) 1-2-004:005 and 007 por., (2) 1-1-002:002, (2) 1-1-001:044 and 050; and (2) 2-9-014:001, 005, 011, 012, and 017 on behalf of Alexander & Baldwin Inc. (A&B) / **East Maui Irrigation Company, Limited (EMI)**

Thank you for the opportunity to review and comment on the subject matter. The Land Division of the Department of Land and Natural Resources (DLNR) distributed or made available a copy of your request pertaining to the subject matter to DLNR's Divisions for their review and comments.

At this time, enclosed are comments from the (a) Engineering Division and (b) Office of Conservation and Coastal Lands on the subject matter. Should you have any questions, please feel free to contact Darlene Nakamura at 587-0417 or email: darlene.k.nakamura@hawaii.gov. Thank you.

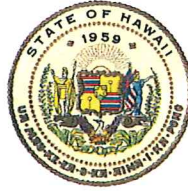
Sincerely,

A handwritten signature in blue ink, appearing to read "Russell Y. Tsuji".

Russell Y. Tsuji
Land Administrator

Enclosures
cc: Central Files

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 23, 2019

MEMORANDUM

TO:

DLNR Agencies:

- Div. of Aquatic Resources
- Div. of Boating & Ocean Recreation
- Engineering Division
- Div. of Forestry & Wildlife
- Div. of State Parks
- Commission on Water Resource Management
- Office of Conservation & Coastal Lands
- Land Division – Maui District
- Historic Preservation

FROM

FROM:

Russell Y. Tsuji, Land Administrator

SUBJECT:

Draft Environmental Impact Statement for the Proposed Water Lease

LOCATION:

Nahiku, Keanae, Honomanu, and Huelo License Areas, Island of Maui; TMK Nos.: (2) 1-2-004:005 and 007 por., (2) 1-1-002:002, (2) 1-1-001:044 and 050; and (2) 2-9-014:001, 005, 011, 012, and 017

APPLICANT:

Wilson Okamoto Corporation on behalf of Alexander & Baldwin Inc. (A&B) / **East Maui Irrigation Company, Limited (EMI)**

Transmitted for your review and comment is information on the above-referenced subject matter. Please submit any comments by **November 1, 2019**.

The Draft EIS can be found on-line at: <http://health.hawaii.gov/oeqc/> (Click on The Environmental Notice in the middle of the page.)

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Darlene Nakamura at 587-0417 or by email at darlene.k.nakamura@hawaii.gov. Thank you.

- () We have no objections.
- () We have no comments.
- () Comments are attached.

JAMES KURATA

Signed:

[Signature]

Print Name:

FOR Carty S. Chang, Chief Engineer

Date:

9/30/19

Attachments
cc: Central Files

19 SEP 25 AM 10:35 ENGINEERING

**DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION**

LD/Russell Y. Tsuji

**Ref: Draft Environmental Impact Statement for the Proposed Water Lease
TMK(s): (2) 1-2-004:005 and 007 por., (2) 1-1-002:002, (2) 1-1-001:044 and
050; and (2) 2-9-014:001, 005, 011, 012, and 017**

**Location: Nahiku, Keanae, Honomanu, and Huelo License Areas, Island of
Maui**

**Applicant: Wilson Okamoto Corporation on behalf of Alexander & Baldwin
Inc. (A&B) / East Maui Irrigation Company, Limited (EMI)**

COMMENTS

The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a Special Flood Hazard Area (high risk areas). State projects are required to comply with 44CFR regulations as stipulated in Section 60.12. Be advised that 44CFR reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may stipulate higher standards that can be more restrictive and would take precedence over the minimum NFIP standards.

The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA's Flood Insurance Rate Maps (FIRM), which can be viewed on our Flood Hazard Assessment Tool (FHAT) (<http://gis.hawaiiinfip.org/FHAT>).

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

- Oahu: City and County of Honolulu, Department of Planning and Permitting (808) 768-8098.
- Hawaii Island: County of Hawaii, Department of Public Works (808) 961-8327.
- Maui/Molokai/Lanai County of Maui, Department of Planning (808) 270-7253.
- Kauai: County of Kauai, Department of Public Works (808) 241-4896.

Signed: _____

FOR

Carty S. Chang

CARTY S. CHANG, CHIEF ENGINEER

Date: _____

9/30/19

DAVID Y. IGE
GOVERNOR OF
HAWAII



RECEIVED
LAND DIVISION

2019 NOV -4 PM 1:46

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

Correspondence: HA 20-65

MEMORANDUM

TO: Russ Tsuji, Administrator
Land Division

FROM: Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

NOV - 4 2019

SUBJECT: Comments on the Draft Environmental Impact Statement (EIS) for a Water Lease Located at Nāhiku, Ke'anae, Honomanū, and Huelo, Maui, TMKs: (2) 1-2-004: 005 & 007; 1-1-002:002; 1-1-001:044 & 050; 2-9-014: 001, 005, 011, 012 & 017

The Office of Conservation and Coastal Lands (OCCL) has reviewed the draft EIS regarding land uses in the Conservation District and note the entire licensed area is within the Conservation District Protective, Limited and Resource subzones. According to the draft document, a 30-year lease will enable the lessee to enter upon lands owned by the State to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System and allow for the continued operation of the Aqueduct System to deliver water. No new construction is required to issue the lease.

The OCCL recognizes the Aqueduct System as a nonconforming land use or a land use that was created prior to the advent of the Conservation District. While pursuant to the Hawai'i Administrative Rules (HAR) §13-5-7, the continuance, or repair and maintenance of nonconforming land uses shall not be prohibited; the repair of structures shall be subject to development standards set forth in HAR, Chapter 13-5. Further, modifications to the Aqueduct System to comply with instream flow standards; monitoring devices; related improvements to existing roads and trails; proposed new roads, dam reservoirs, and fencing; and native tree removal mitigation shall also be subject to HAR, Chapter 13-5.

According to the draft EIS, there is a concern about the physical condition of the Aqueduct System. While proposed mitigative action is identified for activities, there is no description of the expected "maintenance and repair" to the roads and trails and aqueduct that may be necessary for continued operation. The EIS should discuss the routine/preventative maintenance that is in place and given the age of the system are there any expected major future maintenance actions?

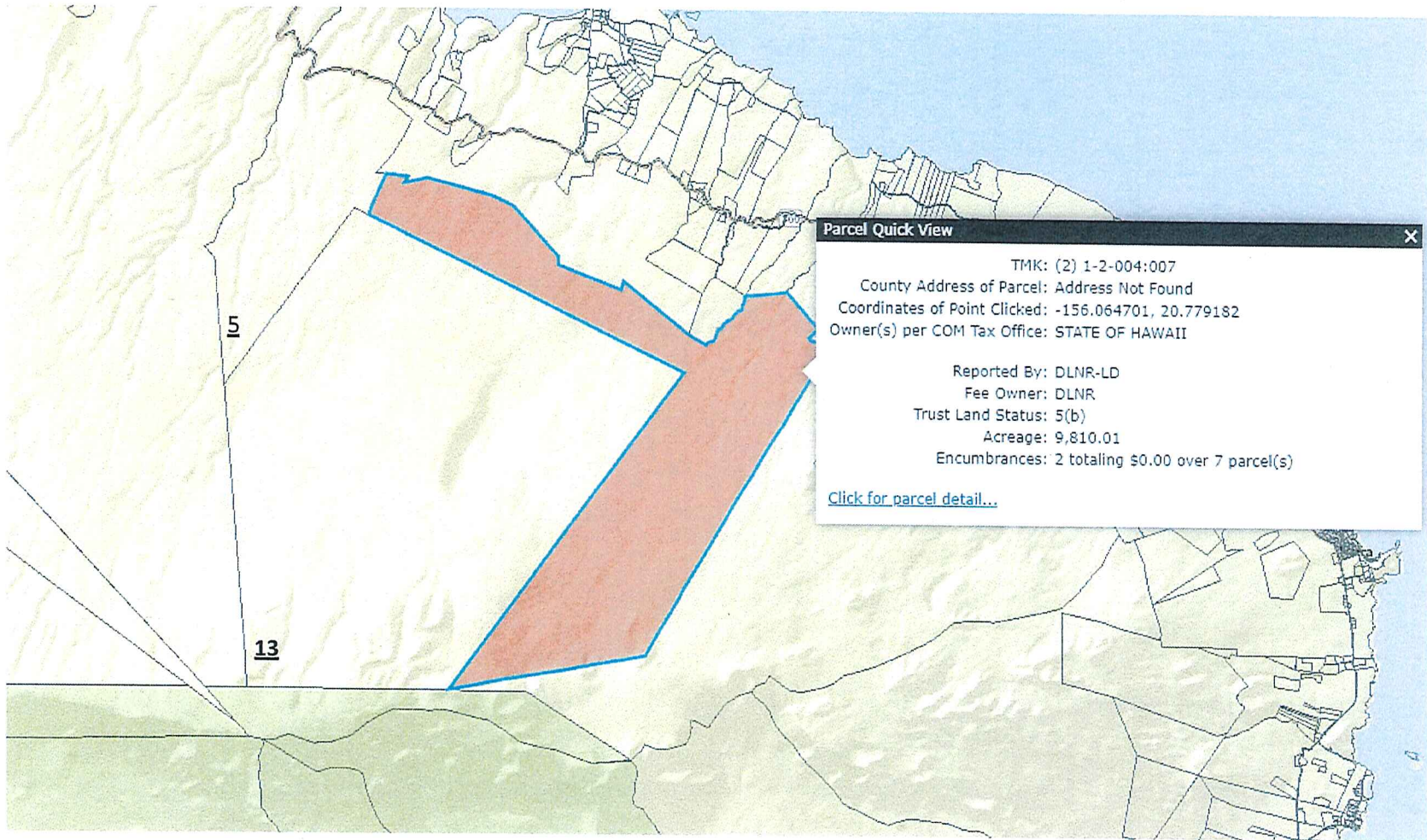
The OCCL notes on September 28, 1990, the Board of Land and Natural Resources (Board) approved Conservation District Use Permit (CDUP) MA-2376 for the installation of a water transmission line, the installation of 30 fifty-foot tall poles for overhead powerlines and a 1-year temporary land use to test Kuhiwa well. Our records indicate this land use upon Tax Map Key (2) 1-2-004:003. Pdf page 1033 appears to indicate that the Kuhiwa well is on parcel 007, when the Kuhiwa well is on parcel 003.

The illustrations and maps of the licensed area do not reflect the Natural Area Reserve on parcel 013. We have included an attachment of the area from the State Public Land Trust Information System that illustrates the new boundaries of TMKs: (2) 1-2-004:005, 007 & new NAR parcel 013. On January 27, 1984, the Board approved CDUP MA-1591 for Subdivision and Establishment of the Hanawi Natural Area Reserve that included portions of tax map keys: (2) 1-2-004:005 & 007. The staff recommendation to the Board stated the makai boundary was adjusted to the 2000-ft. elevation to exclude the existing Pogues tunnel and an area perceived as having potential for future water development. Given that areas of existing and potential future water development have been excluded from the Hanawi NAR, will the licensed area be amended, or will it include a portion of the NAR parcel 013?

Should there be any questions regarding this memorandum, contact Tiger Mills of our Office at (808) 587-0382.

DEIS for Water License Area

Correspondence: MA 20-65



<https://pltis.hawaii.gov/HomeAuthenticated/Map>



10238-04
September 3, 2021

Ms. Carty Chang
Chief Engineer
Engineering Division
Department of Land and Natural Resources
State of Hawai'i
P.O. Box 621
Honolulu, HI 96809

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Ms. Chang:

Thank you for comments dated November 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within Special Flood Hazard Area (high risk areas). State projects are required to comply with 44CFR regulations as stipulated in Section 60.12. Be advised that 44CFR reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may stipulate higher standards that can be more restrictive and would take precedence over the minimum NFIP standards.*

Response 1: We acknowledge your comments. However, please note that there is no development associated with the Proposed Action. The Proposed Action is the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose

10238-04
Letter to Ms. Carty Chang
Page 2
September 3, 2021

of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugarcane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS, including those related to flood hazards. For East, Upcountry, and Central Maui, there are no significant impacts on flooding anticipated.

Comment 2: *The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA's Flood Insurance Rate Maps (FIRM), which can be viewed on our Flood Hazard Assessment Tool (FHAT) (<http://gis.hawaiiifip.org/FHAT>).*

Response 2: Please note that Section 4.3.3 of the Draft EIS did research the Flood Hazard Zone designation for East, Upcountry, and Central Maui which are further depicted by Figures 4-29 to 4-31 for each respective region. As noted in Response #1, there are no significant impacts on flooding anticipated.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Samuel Lemmo
Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawai'i
P.O. Box 621
Honolulu, HI 96809

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Mr. Lemmo:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The Office of Conservation and Coastal Lands (OCCL) has reviewed the draft EIS regarding land uses in the Conservation District and note the entire licensed area is within the Conservation District Protective, Limited and Resource subzones. According to the draft document, a 30-year lease will enable the lessee to enter upon lands owned by the State to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System and allow for the continued operation of the Aqueduct System to deliver water. No new construction is required to issue the lease.*

Response 1: You are correct. Please note that a discussion regarding the Conservation District subzones and its objectives has been added to Section 5.1.3 of the Final EIS, as shown on pages 5-36 to 5-39.

10238-04

Letter to Mr. Samuel Lemmo

Page 2 of 4

September 3, 2021

Comment 2: *The OCCL recognizes the Aqueduct System as a nonconforming land use or a land use that was created prior to the advent of the Conservation District. While pursuant to the Hawai'i Administrative Rules (HAR) §13-5-7, the continuance, or repair and maintenance of nonconforming land uses shall not be prohibited; the repair of structures shall be subject to development standards set forth in HAR, Chapter 13-5. Further, modifications to the Aqueduct System to comply with instream flow standards; monitoring devices; related improvements to existing roads and trails; proposed new roads, dam reservoirs, and fencing; and native tree removal mitigation shall also be subject to HAR, Chapter 13-5.*

Response 2: We acknowledge your comments that the EMI Aqueduct System is a nonconforming land-use that was developed prior to the advent of the State Land Use Conservation District. We note that pursuant to HAR §13-5-7, the continuance, or repair and maintenance of nonconforming land uses shall not be prohibited. Please note that as discussed in Section 2.1.2 of the Final EIS, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment. The Applicant will ensure that repair and maintenance activities are subject to the development standards set for in HAR, Chapter 13-5. We also note that modifications to the EMI Aqueduct System to comply with the IIFS; monitoring devices; related improvements to existing roads and trails; proposed new roads, dam reservoirs, and fencing; and native tree removal mitigation are also subject to HAR, Chapter 13-5.

Comment 3: *According to the draft EIS, there is a concern about the physical condition of the Aqueduct System. While proposed mitigative action is identified for activities, there is no description of the expected "maintenance and repair" to the roads and trails and aqueduct that may be necessary for continued operation. The EIS should discuss the routine/preventative maintenance that is in place and given the age of the system are there any expected major future maintenance actions?*

Response 3: Your comment about the physical condition of the EMI Aqueduct System is unclear. Please note that the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System. We also note that Appendix D of the EIS provides a Historical Structure

10238-04
Letter to Mr. Samuel Lemmo
Page 3 of 4
September 3, 2021

Assessment East Maui Aqueduct System prepared by Mason Architects to provide an assessment of the historical significance of the EMI Aqueduct System.

Regarding maintenance and repair activities, as noted in Response #2 above, as discussed in Section 2.1.2 of the Final EIS, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment.

Please note that at this time, there are not any expected major maintenance actions regarding the EMI Aqueduct System. However, regarding the Central Maui Field Irrigation System, where system losses are present, it should be noted Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown in page 2-25.

Comment 4: *The OCCL notes on September 28, 1990, the Board of Land and Natural Resources (Board) approved Conservation District Use Permit (CDUP) MA-2376 for the installation of a water transmission line, the installation of 30 fifty-foot tall poles for overhead powerlines and a 1-year temporary land use to test Kuhiwa well. Our records indicate this land use upon Tax Map Key (2) 1-2-004:003. Pdf page 1033 appears to indicate that the Kuhiwa well is on parcel 007, when the Kuhiwa well is on parcel 003.*

Response 4: Please note that the Proposed Action is a request for a water lease to divert water from government-owned lands within the approximately 33,000-acre License Area. The location of the License Area is on State-owned lands identified by the Tax Map Key numbers listed in Table 1-1 and Figure 1-2 of the EIS. Please note that TMK (2) 1-2-004:003 is not a part of the Water Lease and is not relevant to the Proposed Action and is not related to the EMI Aqueduct System. Hence, it is outside the scope of this EIS.

Comment 5: *The illustrations and maps of the licensed area do not reflect the Natural Area Reserve on parcel 013. We have included an attachment of the area from the State Public Land Trust Information System that illustrates the new boundaries of TMKs: (2) 1-2-004:005, 007 & new NAR parcel 013. On January 27, 1984, the Board approved CDUP MA-1591 for*

10238-04
Letter to Mr. Samuel Lemmo
Page 4 of 4
September 3, 2021

Subdivision and Establishment of the Hanawi Natural Area Reserve that included portions of tax map keys: (2) 1- 2-004:005 & 007. The staff recommendation to the Board stated the makai boundary was adjusted to the 2000-ft. elevation to exclude the existing Pogues tunnel and an area perceived as having potential for future water development. Given that areas of existing and potential future water development have been exclude from the Hanawi NAR, will the licensed area be amended or will it include a portion of the NAR parcel 013?

Response 5: We acknowledge your comments. Section 1.3.1 and 3.2.2.2 of the Final EIS has been updated to acknowledge that under the water revocable permits (RPs) issued for 2020 and approved for 2021, the Hanawī Natural Area Reserve (NAR) was removed the License Area under the revocable permits as shown on page 1-2 and page 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawī NAR.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

November 1, 2019

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Earl Matsukawa
Wilson Okamoto Corporation
1907 S. Beretania Street, Suite 400
Honolulu, Hawaii 96826



SUBJECT: Comments on the Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas

The Division of Forestry and Wildlife (DOFAW) acknowledges receipt of your letter dated September 23, 2019, recognizing DOFAW’s comments and concerns during the early consultation process regarding the DEIS and proposed water lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. While some of DOFAW’s comments (letter dated December 19, 2016) were included in Appendix J of the DEIS, others were not, including a letter dated January 24, 2017. Below we provide additional comments.

- 1) Please see our comments of January 24, 2017, provided here as Attachment 1.
- 2) Public access.

The DEIS proposed action to include lease of the entire Ko‘olau Forest Reserve (FR) and Hanawi Natural Area Reserve (NAR) is not appropriate. The area to be leased should include only the water diversion and delivery structures that are required to be accessed and maintained by A&B/EMI for water use purposes.

DOFAW advised A&B/EMI in its letters dated December 19, 2016 and January 24, 2017, and in a meeting with representatives of A&B/EMI in September 2019, that it does not intend to lease the entire Ko‘olau FR and Hanawi NAR to A&B/EMI for this proposed action. The Board of Land and Natural Resources (BLNR), at its October 11, 2019 meeting, affirmed that the license area would not include Hanawi NAR and would not comprise the entire Ko‘olau FR, and conditioned its approval of the annual Revocable Permit (RP) that is currently issued to A&B/EMI subject to A&B/EMI continuing discussions with DOFAW to identify additional Ko‘olau FR lands that will be removed from the license area.

The DEIS does not provide an adequate assessment of impacts to public access to the natural resources of the proposed lease area resulting from the proposed action. Pursuant to §11-200.1-13 (b)(2), an action shall be determined to have a significant effect on the environment if it may curtail the range of beneficial uses of the environment. The proposed action to lease

lands within the Ko'olau FR, which comprises nearly 50% of the public trust lands held in the forest reserve system on Maui, will significantly curtail beneficial uses of the forest reserves, including hiking, outdoor experience, recreation, hunting, gathering, and traditional and customary practice.

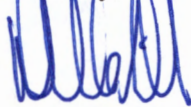
3) Disposition of structures, equipment, and items no longer in use.

The DEIS does not adequately assess the environmental impacts that may result from the abandonment of structures, equipment, and items no longer in use. The DEIS should assess those impacts and provide a schedule and plan for their removal.

DOFAW and partners, including the Division of Aquatic Resources (DAR), recently conducted inspections of stream diversion sites that A&B/EMI intended to discontinue use of for water diversion purposes. DOFAW noted at those sites structures, equipment, and items that upon abandonment would serve no functional purpose, that would have negative impacts on the environment, including creating breeding sites for mosquitoes that serve as vectors for diseases that impact humans and endangered birds, altering the natural condition of stream flows, and causing erosion that impacts coral reef and near shore marine habitats.

A report of our findings was submitted as comments to the Commission on Water Resource Management (CWRM), dated June 28, 2019, regarding A&B/EMI's application for a stream diversion works permit for abandonment of certain stream diversions. We refer you to those comments, included here as Attachment 2, for a description of some of the environmental impacts that are expected to result from the proposed action. Please note that we did not survey every diversion site with structures, equipment, and items no longer in use, and we provide those comments as examples to illustrate the issues of concern.

Sincerely,



David G. Smith
DOFAW Administrator

Cc: Alexander & Baldwin Inc. (A&B)/East Maui Irrigation Company, Limited (EMI)
Ian Hirokawa, DLNR Land Division

Attachment 1: January 24, 2017 letter on EIS Preparation Notice
Attachment 2: June 28, 2019 letter to CWRM

17 13

DAVID Y. IGE
GOVERNOR OF HAWAIISUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENTSTATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISIONPOST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 5, 2017

MEMORANDUM

TO: **DLNR Agencies:**
 Div. of Aquatic Resources
 Div. of Boating & Ocean Recreation
 Engineering Division
 Div. of Forestry & Wildlife
 Div. of State Parks
 Commission on Water Resource Management
 Office of Conservation & Coastal Lands
 Land Division – Maui District
 Historic Preservation

FROM: Russell Y. Tsuji, Land Administrator

SUBJECT: Environmental Impact Statement Preparation Notice for Proposed Lease for the Nahiku, Keanae, Honomanu and Huelo License Areas - **EDITS**

LOCATION: East, Central and Up-County Maui, Island of Maui; TMK: (2) various

APPLICANT: Alexander and Baldwin, Inc. and East Maui Irrigation Company, Limited

Transmitted for your review and comment is information on the EISPN for the above-referenced project. We would appreciate your comments on this EISPN. Please submit any comments by **January 25, 2017**.

Only one (1) copy of the EISPN is available for your review in Land Division office, Room 220.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Lydia Morikawa at 587-0410. Thank you.

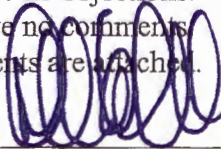
Attachments

- We have no objections.
 We have no comments.
 Comments are attached.

Signed:

Print Name:

Date:



 David G. Smith
 1/29/17

cc: Central Files

Attachment 1

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

January 24, 2017

TO: EARL MATSUKAWA
WILSON OKAMOTO CORPORATION, PROJECT MANAGER

FROM: DAVID G. SMITH
FORESTRY AND WILDLIFE, ADMINISTRATOR

SUBJECT: ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE FOR
PROPOSED LEASE FOR THE NĀHIKU, KE'ANAE, HONOMANŪ, AND
HUELO LICENSE AREAS

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Thank you for the opportunity to comment on the Environmental Impact Statement Preparation Notice (EISPN) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas to Alexander and Baldwin, Inc. and East Maui Irrigation Company, Limited (A&B). We are in receipt of the copy dated January 2017, and marked as Draft for Internal Review. We have previously provided comments on an earlier version of this Preparation Notice in a memo dated December 19, 2016 and note that our comments are not acknowledged or reflected in the current draft.

The proposed lease of state lands for the purpose of delivering water from those lands to users includes the state lands managed/designated to the Division of Forestry and Wildlife comprising the Ko'olau Forest Reserve, established by governor's proclamations of 1905 and 1907, and the Hanawī Natural Area Reserve (NAR), established by Executive Order 3351 (1986) (hereinafter, the Reserves). Those Reserves are managed by the Division for purposes consistent with their establishment under state law, including protection of watersheds, natural resources, native ecosystems, and public access. Further, the Reserves are public trust lands subject to constitutional and statutory provisions for public use, including hunting, gathering, recreational, subsistence and cultural use.

The Division is concerned that the proposed lease of the Reserves includes public lands well in excess of what is necessary to ensure the effective delivery of the water, and that the requested lease would unnecessarily encumber the Reserves, potentially impacting the purposes and public use of those areas. Pursuant to those concerns, we provide the following comments on the EISPN:

- 1) The proposed lease of the Hanawī NAR is not consistent with the statutory purpose of that Reserve and should be removed from consideration for lease. Further, the Division notes that any activities within the Hanawī NAR would require a Natural Area Reserve System special use permit that is presented to the Natural Area Reserves System Commission for recommendations to the Board of Land and Natural Resources.

East Maui EISPN

Page 2

- 2) The proposed land use agreement should be limited to the water infrastructure and other areas required for maintenance and conveyance of water, such as through an easement or other appropriate instrument that does not include the lease of the entirety of the Reserves; this alternative action should be considered as part of the EIS analysis.
- 3) The proposed land use agreement should not include restrictions on public access to the reserves.
- 4) The EISPN should include consideration of the following anticipated impacts of the proposed action on:
 - a) Native ecosystems, resource management, and recovery efforts for rare and endangered species.
 - b) Erosion and other impacts by soil as it relates to road maintenance activities.
 - c) Cultural and subsistence uses of the forest such as forest product collection.
 - d) Public access to the reserves.
 - e) Impacts of climate change to watershed and water diversion system of East Maui.
- 5) Hawai'i Revised Statutes (HRS) and Hawai'i Administrative Rules (HAR) for the Forest Reserve (Chapter 183, HRS and Chapter 13-104, HAR) and Natural Area Reserve Systems (Chapter 195, HRS and Chapter 13-209, HAR), should be included and considered in Chapter 4, "Compatibility with Land Use Plans and Policies, Required for Permits and Approvals."

The Division appreciates the long standing and productive relationship we have had with A&B and the adjacent landowners of East Maui for the responsible stewardship of watershed lands and natural resources of this region. This partnership has facilitated effective management and ensured that the natural resources of the East Maui watersheds are protected for the benefit of future generations. We look forward to productive discussions with A&B regarding this request and determining the appropriate land disposition for proposed water conveyance. Please contact Scott Fretz, Maui Branch Manager, at (808) 984-8100 or by email at Scott.Fretz@hawaii.gov if you have any questions or would like to follow-up on our comments.

cc: Kevin Moore, Scott Fretz, Irene Sprecher

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

June 28, 2019

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

TO: Kaleo Manuel, Deputy Director
Commission on Water Resource Management

FROM: David Smith, Administrator *DES*
Division of Forestry and Wildlife

SUBJECT: Comments on Alexander and Baldwin, Inc. applications for stream diversion works permits for abandonment.

Thank you for the opportunity to comment on the applications for stream diversion works permits for abandonment submitted to the Commission on Water Resource Management (Commission) by Alexander and Baldwin, Inc. (A&B). It is our understanding that the applicant intends to abandon 70 stream diversions and is in the process of securing the appropriate permits to do so. We understand further that the diversions are being grouped into different categories for administrative purposes and that separate applications are being submitted for each category.

The Division appreciates A&B's long-standing commitment to the conservation of East Maui's vital watersheds. We have worked closely with A&B and the other partners of the EMWP to implement effective conservation measures at a landscape scale with unprecedented success. We provide our comments here in the spirit of that partnership to further our shared commitment to the effective conservation of the watersheds of east Maui.

In a memo dated December 18, 2018, the Division provided comments on one of those applications, filed as SDWP 4915.6 (<https://dlnr.hawaii.gov/cwrm/surfacewater/review/>). In that memo, we expressed concerns that the applicant intends to leave in place a number of stream alterations that may substantially alter the natural condition of the streams, concrete fixtures, channels, walls, catchments, and tunnels that potentially alter stream flows and surfaces, exacerbate erosion, encourage establishment of invasive species, degrade plant and wildlife habitats, and affect wildlife dispersal and movements. Our comments were general, citing the biological and regulatory reasons for our concerns, and noting that the applicant did not explain its rationale for leaving certain stream alterations in place. We

requested that the applicant provide additional information to inform its proposal to leave those alterations in place.

In a follow-up discussion on March 28, 2019 with you and your staff regarding a subsequent application, filed as SDWP 4950.6, Division staff reiterated our concerns and offered to provide more specific comments and recommendations regarding the proposed abandonments. Pursuant to that, we conducted field assessments at selected diversions for which abandonment is planned. Our findings and recommendations from those assessments are provided in Attachments A and B.

Finally, we appreciate A&B's expressed desire to restore stream flow in a timely manner. While we acknowledge that implementation of some of the measures we recommend here may require additional time, we suggest that the primary tasks to restore stream flow can be implemented initially, ensuring that water is returned to the streams in a timely manner, with the additional recommended work to proceed on a reasonable schedule.

Attachment A

General comments

The Division of Forestry and Wildlife is responsible for the management of forest and wildlife resources within the Ko'olau Forest Reserve that may be affected by the actions proposed in the subject application. The applicant currently holds authorizations to employ certain structural improvements within the forest reserve to effect the diversion of water for collection and use. At such time that those structures will no longer be used for that, or any other, approved purpose, the Division requests that they be removed, to the extent practicable. We believe this request is consistent with the Commission's Conclusions of Law, dated June 20, 2018, in which it is noted that instream uses shall be guided by the general principles set forth in §13-169-20, Hawaii Administrative Rules, which include that, where practicable, streams should be maintained with water sufficient to preserve fish, wildlife, scenic, aesthetic, recreational, and other uses, and stream systems should be retained substantially in their natural condition.

In our field assessments conducted in May of this year, we noted several general issues of concern related to the proposed abandonment of diversion structures in the forest reserve. Those include:

1. Walls, structures, or channels that alter the natural course of the stream, such that water becomes trapped and stagnant in areas where flow is restricted. Stagnant waters become breeding sites for mosquitoes, which are vectors for introduced diseases that are a major threat to native forest birds.
2. Use of pipes or other structures that are known to obstruct passage of native fish.
3. Alteration of streams that result in high levels of erosion, affecting water quality.
4. Abandonment of accessory structures, including pipes, pump houses, intakes, mechanisms, or other items no longer in use, which may become derelict if not maintained.

Attachment B

Specific comments

1) Honopou Stream

a) Honopou is a perennial stream approximately 10 miles in length, originating in the Koolau Forest Reserve. The stream is reported by DAR to have native macro faunal diversity > 5 species, including native fish, crustaceans, and insects.

b) Diversions

i) Wailoa ditch intake (W-22)

(1) Comments

(a) Diversion located in Koolau FR

(b) Grate captures water diverting it to the Wailoa ditch. Application proposes to seal grate to allow stream to flow. Accessory pipes were found in the diversion area.

(2) Recommendations

(a) Remove any pipes and accessories not in use.



Figure 1. Wailoa ditch intake (W-22). Collection grate (left) and accessory pipes (right).

ii) New Hamakua ditch intake (NH-22)

(1) Comments

- (a) Diversion located in Koolau FR
- (b) Grate on the west side of stream captures water for diversion. Application proposes to seal grate by filling with concrete.

(2) Recommendations

- (a) After the grate is sealed, the steel plate should be removed and sufficient concrete should be used to ensure that stream flow is continuous over the grate area and water cannot become trapped and stagnant, creating breeding sites for mosquitoes.
- (b) Remove any accessory structures not in use, such as the pump house shown in the figure below.



Figure 2. Grate to be sealed (left). Accessory pump house above grate (right).

iii) Lupi long intake at Wailoa ditch (W-22a)

(1) Comments

- (a) Diversion located in Koolau FR
- (b) Grate is sealed. This tributary leads to Honopou stream.
- (c) The tributary appears to take a modified path through cut and disturbed soil that may be prone to extensive erosion. It is not clear why this is the case and whether this is an unnatural condition that has resulted from ground disturbance.

(2) Recommendation

- (a) Further investigation is recommended to assess whether there is an erosion problem that can be addressed.

iv) Wailole intake at New Hamakua ditch (NH-23)

(1) Comments

- (a) This diversion is on EMI lands.
- (b) The tributary feeds Honopou stream, which runs through the Koolau Forest reserve.
- (c) The road crossing this tributary to Honopou stream appears to be prone to high levels of erosion.

(2) Recommendation

- (a) Please assess erosion and impacts to water quality resulting from this location and consider installation of a concrete swale or other measures to control erosion.



Figure 3. Road crossing tributary would appear to be prone to high levels of erosion.

v) Honopou at Haiku ditch (H-8)

(1) Comments

(a) This diversion is on EMI lands.

(b) The diversion structures appear to include a steel plate that overhangs the stream. This plate may interfere with fish passage.

(2) Recommendation

(a) In addition to measures identified in the application, please remove the steel plate that overhangs the stream. This plate may obstruct fish passage.

- 2) Hanehoi stream
 - a) Hanehoi Stream is a perennial stream approximately 5.4 miles in length, originating in the Koolau FR. Hanehoi Stream supports native algae, crustaceans, and insects, including *Megalagrion pacificum*, listed as endangered under state and federal law.
 - b) Diversions
 - i) Hanehoi at Wailoa ditch (W-18)
 - (1) Comments
 - (a) Diversion located in Koolau FR
 - (b) Walls on both sides of the stream prevent the stream water from taking its natural course. The walls create sections where water stands and cause pooling of water, which becomes stagnant and creates breeding sites for mosquitoes.
 - (c) Water is also standing and foul in the sluice basin or catchment entry structure where the gate is located.
 - (2) Recommendations
 - (a) In addition to the measures identified in the application to seal the grate, remove the walls to restore the natural stream flow and eliminate mosquito breeding sites.
 - (b) Prevent stagnant water and mosquito breeding sites sealing the sluice basin or other measures to avoid water standing in the structure.



Figure 4. Stagnant water standing in depressions created by the walls and the gate structure.

ii) Hanehoi Huelo intake at New Hamakua ditch (NH-17)

(1) Comments

(a) The wall across the stream bed creates a dam that obstructs the natural course of the stream.

(2) Recommendations

(a) In addition to the measures identified in the application to seal the grate, please remove the wall across the stream bed to restore the natural stream flow.



Figure 5. Wall across stream bed creates a dam that that alters flow and creates standing water.

iii) West Hanehoi (Puolua) intake at New Hamakua ditch (NH-17a)

(1) Comments

(a) Located in Koolau FR

(b) This tributary enters the New Hamakua ditch where the access road runs along and makai of the ditch. The application proposes to install a stream bypass to enable the tributary to cross over the ditch.

(c) The stream must also cross the road and the application does not describe how that will be constructed.

(2) Recommendations

(a) The methods employed to enable the stream to cross the road should ensure that erosion of the road is avoided. This may be done by installing a concrete swale or by installation of a culvert of appropriate diameter under the road.



Figure 6. Location where tributary will cross the access road.

iv) Hanehoi (Puoloa) Roseapple intake at Lowrie ditch (L-7a).

(3) Comments

- (a) The application proposes to construct an overpass that will allow the stream to cross the ditch. Since the access road runs parallel to the ditch at this location, the stream will also need to cross the road.

(4) Recommendations

- (a) A concrete swale should be constructed across the road at this location to avoid erosion of the road, which appears to be currently comprised of soil only.
- (b) A culvert should not be used at this site since this stream is a fish corridor and fish are not expected to cross through culverts.



Figure 7. Location where stream will cross access road.

3) East Wailuanui Stream

a) Wailuanui Stream is a perennial stream that originates in the Koolau FR and spans a length of approximately 9.6 miles. Wailuanui Stream supports a high diversity of native species, including crustaceans, fish, snails, and insects.

b) Diversions**i) East Wailuanui at Koolau ditch (K-18)****(1) Comments**

(a) This diversion consists of walls on both sides of the stream that divert the stream into the ditch on the west side of the stream. The east wall crosses nearly the entire stream bed to divert the water to the west.

(b) The walls trap standing water on both sides of the stream, as well as in the intake, which we found to be very stagnant, creating breeding sites for mosquitoes. The application proposes to permanently remove the sluice gate to restore stream flow and to fill the intake with concrete.

(2) Recommendations

(a) Remove the walls on the east and west side of the stream in their entirety. Those walls will no longer be used for diversion purposes and their presence creates large areas of stagnate water that creates breeding sites for mosquitoes.

(b) Ensure that sufficient fill material is used for the intake to ensure that water does not become stagnant in the intake.

(c) Remove the pillar and structures at the intake since they will no longer be used for water diversion purposes.



Figure 8. East Wailuanui at Koolau ditch (K-18). Stagnant water outside the west wall (top left), wall crossing stream (top right), stagnant water on the east side of the stream.

ii) East Wailuanui to Koolau ditch at control house (K-19)

(1) Comments

- (a) Diversion consists of walls that channel the stream flow over the ditch where a collection grate allows the water to fall into the ditch.
- (b) The application proposes to cover and seal the grate so that water will continue downstream.

(2) Recommendations

- (a) The channel that is created by the walls is relatively narrow and low. It is unknown whether it may should be monitored regularly to ensure that it does not become obstructed by debris.
- (b) The control house and related structures should be removed if they are no longer in use.

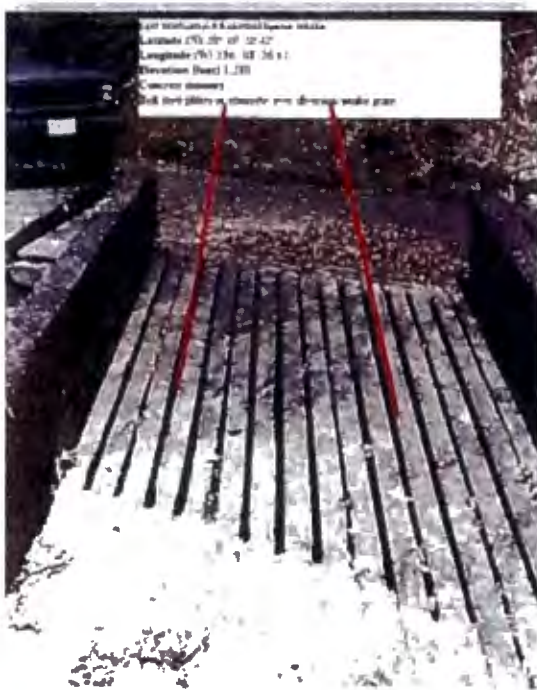


Figure 9. Channel to enable stream to cross ditch (left). Control house at K-19 (right).

iii) West Wailuanui intake #7 at Koolau ditch

(1) Comments

- (a) Diversion at a tributary that consists of a wing wall on the west side of the stream that directs flow into a set of slots in a wall on the east side.
- (b) Application proposes to fill the collection slots to enable stream to flow down. Where the stream crosses the access road, a pipe under the road directs water under the road. The road has a concrete swale.
- (c) The wing wall appears to be creating pooling of stagnant water and the pipe was found to be clogged. The pipe obstructs movement of fish upstream.

(2) Recommendations

- (a) Remove the wing wall to prevent standing water
- (b) Seal the pipe so that water will flow freely over the swale and enable fish movement upstream.



Figure 10. Wing wall causing pooling of stagnant water at K-20.

iv) West Wailuanui at Koolau ditch (K-21)

(1) Comments

- (a) Diversion consists of a large dam that directs the stream flow into collection slots on the east side of the stream.
- (b) The dam is fitted with a sluice and gate to enable water to flow downstream when it is not being diverted.
- (c) The application proposes to cover the collection slots and permanently remove the gate.

(2) Recommendations

- (a) The sluice is relatively narrow and may become clogged. Monitoring is recommended to ensure it does not become clogged.
- (b) If the gate house structure is no longer used it should be removed.
- (c) The dam will also not be used. However, since it is of substantial size and mass, we recommend that consideration of its disposition be deferred until further assessments can be conducted to determine the best course of action.



Figure 11. Dam, gate, and control structure at K-21.



WILSON OKAMOTO
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10238-04
September 3, 2021

Mr. David Smith
Administrator
Division of Fish and Wildlife
Department of Land and Natural Resources
State of Hawai'i
1151 Punchbowl Street, Room 325
Honolulu, HI 96813

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Mr. Smith:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The Division of Forestry and Wildlife (DOFAW) acknowledges receipt of your letter dated September 23, 2019, recognizing DOFAW's comments and concerns during the early consultation process regarding the DEIS and proposed water lease for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas. While some of DOFAW's comments (letter dated December 19, 2016) were included in Appendix J of the DEIS, others were not, including a letter dated January 24, 2017. Below we provide additional comments.*

Response 1: We acknowledge that the DOFAW received our letter dated September 23, 2019, recognizing DOFAW's comment and concerns in response to DOFAW's comments dated December 16, 2016, and December 16, 2016, during the early consultation process but did not include DOFAW's January 24, 2017 letter during the EISPN process. However, please note that

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while DOFAW's January 24, 2017, letter was not reproduced within the Appendix J of the Draft EIS, our response letter acknowledged that letter and appropriately responded to that letter. Please note that Appendix J of the Final EIS will DOFAW's January 24, 2017, letter.

Comment 2: *Please see our comments of January 24, 2017, provided here as Attachment 1.*

Response 2: Please note that at this stage, we are no longer responding to comments on the EISPN. The EISPN is used as the initial stage of the EIS process in order to scope the Draft EIS. Moreover, as noted in Response #1 above, while DOFAW's January 24, 2017, letter was not reproduced within the Appendix J of the Draft EIS, our response letter acknowledged that letter and appropriately responded to that letter. Please note that Appendix J of the Final EIS will DOFAW's January 24, 2017, letter.

Comment 3: *Public access.*

The DEIS proposed action to include lease of the entire Ko'olau Forest Reserve (FR) and Hanawi Natural Area Reserve (NAR) is not appropriate. The area to be leased should include only the water diversion and delivery structures that are required to be accessed and maintained by A&B/EMI for water use purposes.

Response 4: We acknowledge your comments. Section 1.3.1 and 3.2.2.2 of the Final EIS has been updated to acknowledge that under the water revocable permits (RPs) issued for 2020 and approved for 2021, the Hanawī Natural Area Reserve (NAR) was removed the License Area under the revocable permits as shown on page 1-2 and page 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawī NAR.

Comment 5: *DOFAW advised A&B/EMI in its letters dated December 19, 2016 and January 24, 2017, and in a meeting with representatives of A&B/EMI in September 2019, that it does not intend to lease the entire Ko'olau FR and Hanawi NAR to A&B/EMI for this proposed action. The Board of Land and Natural Resources (BLNR), at its October 11, 2019 meeting, affirmed that the license area would not include Hanawi NAR and would not comprise the entire Ko'olau FR, and conditioned its approval of the annual Revocable Permit (RP) that is currently issued to A&B/EMI subject to A&B/EMI continuing discussions with DOFAW to identify additional Ko'olau FR lands that will be removed from the license area.*

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Response 5: We acknowledge your comments and you are correct. As noted in Response #4 above, Section 1.3.1 and 3.2.2.2 of the Final EIS has been updated to acknowledge that under the water revocable permits (RPs) issued for 2020 and approved for 2021, the Hanawā Natural Area Reserve (NAR) was removed the License Area under the revocable permits as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR.

Comment 6: *The DEIS does not provide an adequate assessment of impacts to public access to the natural resources of the proposed lease area resulting from the proposed action. Pursuant to §11- 200.1-13 (b)(2), an action shall be determined to have a significant effect on the environment if it may curtail the range of beneficial uses of the environment. The proposed action to lease lands within the Ko'olau FR, which comprises nearly 50% of the public trust lands held in the forest reserve system on Maui, will significantly curtail beneficial uses of the forest reserves, including hiking, outdoor experience, recreation, hunting, gathering, and traditional and customary practice.*

Response 7: We respectfully disagree with your comment. Public access within portions of the License Area has been provided, as discussed in Section 4.8 of the Draft EIS, and it is expected either that public access will continue if the scope of the License Area remains the same, or, if the License Area is reduced, that public access within the former License Area lands will be dictated by a State agency. However, please note that Section 4.8 of the Final EIS has been updated to include more recreational facilities and an accurate discussion regarding access into the License Area as it relates to recreational activities as shown on pages 4-305 to 4-309.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access

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into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access to areas that are not within the License Area. Please also see Response #4 above regarding the revised License Area under the most recent revocable permits and projections related to the geographical extent of the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding impacts to the areas that would allow for more public access. Moreover, impacts of the Modified Lease Area alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories.

Comment 8: *Disposition of structures, equipment, and items no longer in use.*

The DEIS does not adequately assess the environmental impacts that may result from the abandonment of structures, equipment, and items no longer in use. The DEIS should assess those impacts and provide a schedule and plan for their removal.

Response 8: Upon making the voluntary commitment to permanently restore the stream flows in the “taro streams”, EMI returned approximately 90-95% of the natural flow of the streams—all that could be done by adjusting (opening or closing) the diversion gates. The final 5-10% to achieve complete restoration requires modifications to diversions, essentially construction projects, thus triggering various permitting processes that continue to be pursued.

Potential impacts from the abandonment of structures and equipment as it relates to native stream habitat was assessed and discussed in Appendix A, the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report.

The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

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The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

However, please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals.

Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

The two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped.

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Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts. The above is discussed in more detail in Section 4.2.1 of the Final EIS as shown on pages 4-63 to 4-67.

Moreover, it should be noted that EMI continually maintains the EMI Aqueduct System. They evaluate areas of the EMI Aqueduct System regularly to identify where maintenance / repair activities are necessary and add them to a list of maintenance projects. Moreover, in response to the Draft EIS comments regarding the condition of the EMI Aqueduct System, EMI staff have been conducting sweeps to locate / remove unnecessary ditch debris from the License Area. This discussion has been added to Section 2.1.2 of the Final EIS as shown on page 2-7.

Moreover, regarding the Central Maui Field Irrigation System, Mahi Pono expects to invest over \$20 million to increase the efficiency of its on-farm irrigation system in Central Maui (i.e. Distribution from Kamole-Weir WTP to the agricultural fields). Mahi Pono's irrigation engineering team is also designing a high-efficiency irrigation system. The new irrigation system will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycle and re-use all water used in Mahi Pono's processing plants; and (3) integrate various live technology feeds to constantly monitor plant, soil, and tree health. This discussion has been added to Section 2.1.4 of the Final EIS as shown on page 2-25.

Hence, the current water delivery system is adequate; both the EMI Aqueduct System and the Central Maui Field Irrigation System. Moreover, Mahi Pono plans to invest money to improve the efficiency of the Central Maui Field Irrigation System and EMI continually maintains the EMI Aqueduct System.

Comment 9: *DOFAW and partners, including the Division of Aquatic Resources (DAR), recently conducted inspections of stream diversion sites that A&B/EMI intended to discontinue use of for water diversion purposes. DOFAW noted at those sites structures, equipment, and items that upon abandonment would serve no functional purpose, that would have negative impacts on the environment, including creating breeding sites for mosquitoes that serve as*

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vectors for diseases that impact humans and endangered birds, altering the natural condition of stream flows, and causing erosion that impacts coral reef and near shore marine habitats.

Response 9: As noted in Response #8 above, potential impacts from the abandonment of structures and equipment as it relates to native stream habitat was assessed and discussed in Appendix A, the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report.

The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows. CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

However, please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals. Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

The two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped.

Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these

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negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts. The above is discussed in more detail in Section 4.2.1 of the Final EIS as shown on pages 4-63 to 4-67.

As it relates to your comment about mosquito breeding grounds, please note that the surrounding forests are a huge rainfall catchment area with innumerable opportunities for standing water to occur long enough for mosquitos to breed. Therefore, any suggestion that dewatered stream beds due to the abandonment of structures that could serve as identifiable corridors for mosquitos into native upland forests is also unfounded. Nevertheless, the instream amount of potential mosquito habitat was quantified using the HSHEP model presented in Appendix A and summarized in Section 4.2.1 of the EIS. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat. Thus, an increase in mosquito habitat was predicted to occur at diverted flows. In all cases, no increase in stream discharge diversion has been proposed. This is a result of the diversions already conveying baseflow from the diverted streams. Therefore, the Proposed Action will not increase mosquito habitat even in locations where the flow restoration has not been proposed. Based on the modeled relationship between increased streamflow and decreased mosquito habitat, in all cases where flow restoration has been proposed there is expected to be a decrease in mosquito breeding habitat as discussed in Section 4.2.1 and Section 4.4.2 of the Draft EIS. While the HSHEP analysis was focused only on mosquito breeding habitat, given the impact of avian malaria on native stream birds, the Proposed Action will do nothing to increase mosquito breeding habitat and therefore should not negatively impact listed native birds.

Your speculation that dewatered streams from the abandonment of structures that could serve as a corridor for mosquitos transmitting avian malaria to reach upland forest habitats may be based on a misunderstanding of why protected bird species remain in those areas. There is evidence of a thermal barrier to mosquitos at higher elevations where the temperature declines. Currently, Hawaiian honeycreepers (including ‘akohekohe, ‘i‘iwi, and kiwikiu that you mention) are already impacted by avian malaria below this thermal barrier, which occurs above 4,921 feet above sea level in the winter months and above 6,234 feet above sea level in the summer months, to the degree that they are rarely found at lower elevations (USFWS 2006, Warner 1968). In other words, this disease and the presence of disease-carrying mosquitos, has already nearly extirpated low-elevation populations of these birds. If there is a thermal barrier to mosquitos,

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other protected bird populations at higher elevations would also have less potential for contracting avian malaria.

This information has been clarified in Section 4.4.2 of the Final EIS as shown on pages 4-126 to 4-127, and pages 4-130 to 4-131.

As it relates to nearshore environments, the collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may

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have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83 of the Final EIS.

Comment 10: *A report of our findings was submitted as comments to the Commission on Water Resource Management (CWRM), dated June 28, 2019, regarding A&B/EMI's application for a stream diversion works permit for abandonment of certain stream diversions. We refer you to those comments, included here as Attachment 2, for a description of some of the environmental impacts that are expected to result from the proposed action. Please note that we did not survey every diversion site with structures, equipment, and items no longer in use, and we provide those comments as examples to illustrate the issues of concern.*

Response 10: We note that the DOFAW submitted a report of their findings to the CWRM, dated June 28, 2019, regarding the application for a stream diversion works permit for

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abandonment of certain stream diversions, which is included to your letter as Attachment 2. As discussed in Response #8 above, potential impacts from the abandonment of structures and equipment as it relates to native stream habitat was assessed and discussed in Appendix A, the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report.

The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows. CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

However, please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals. Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

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Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

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In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts. The above is discussed in more detail in Section 4.2.1 of the Final EIS as shown on pages 4-63 to 4-67.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Yasaka, Lauren E <lauren.e.yasaka@hawaii.gov>
Sent: Wednesday, October 16, 2019 10:15 AM
To: Public Comment
Subject: DEIS Comments from DLNR Land Division
Attachments: 191015 EMI DEIS Comments from DLNR LD.PDF

Follow Up Flag: Follow up
Flag Status: Flagged

Good Morning,

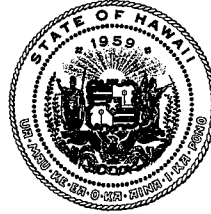
Please find attached a copy of Land Division's comments on the DEIS. Please do not hesitate to contact me with questions or concerns.

Thank you,

Lauren Yasaka, Planner
Land Division
Department of Land & Natural Resources
1151 Punchbowl St., Room 131
Honolulu, HI 96813
(808) 587-0431



DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 15, 2019

Mr. Earl Matsukawa, AICP
Wilson Okamoto Corporation
1907 S. Beretania Street, Ste. 400
Honolulu, HI 96826

SUBJECT: Comments on the Draft Environmental Impact Statement (DEIS) for a Water Lease for the Nahiku, Keanae, Honomanu, and Huelo License Areas Located at East Maui, Hawaii
Tax Map Keys (TMKs): (2) 1-2-004 :005, 007 (por); 1-1-002:002; 1-1-001:044 and 050; 2-9-014: 001, 005, 011, 012 and 017

Dear Mr. Matsukawa:

Thank you for the opportunity to review and comment on the Draft Environmental Impact Statement (DEIS). The Land Division offers the following comments:

1. Please clarify the cumulative impacts of Mahi Pono's proposed diversified agriculture project, the Kula Agricultural Park (KAP) expansion, the Nahiku Community potable water usage, and the County's Upcountry Maui Water System as it relates to the proposed action (EMI Water Lease or Water Lease). While this point is relatively clear in the executive summary, it becomes muddled throughout the DEIS.
2. Please confirm whether the KAP expansion is reliant on the EMI Water Lease. While the KAP expansion is referenced throughout the DEIS, the project description and analysis omits relevant water calculations and is silent on the expansion's cumulative impacts. According to the DEIS, KAP currently requires 1.5 mgd, however the DEIS fails to specifically address the amount of water the KAP expansion will require.

According to a Maui News Article from January 3, 2019, "*an agreement with A&B will provide an additional 1 million gallons of water a day to the new land.*" Please provide clarity and further analysis regarding the additional water needed and expand on its cumulative impacts.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Earl Matsukawa,
Wilson Okamoto Corporation

3. While our comments above note that the cumulative results of users benefitting from the Water Lease should be addressed, we wish to point out that pursuant to Hawaii Revised Statutes (HRS), Chapter 343, and Hawaii Administrative Rules (HAR) Chapter 11-200.1, an environmental assessment is required for actions that “[p]ropose the use of state or county lands...” The definition of land as it relates to public lands, pursuant to HRS Chapter 171, “includes all interests therein and natural resources including water, minerals, and all such things connected with land, unless expressly provided.”

As the Mahi Pono Farm Plan involves the use of State lands (75% of the water being requested in this case), and plays a large role in the cumulative impacts of the proposed Water Lease, and the KAP expansion encumbers both State and County lands as well as County funds, the DEIS should cover all actions (acquisition of a water lease, farm plan and expansion) as part of its proposed action.

4. Regarding the Mahi Pono Farm Plan, we note that it is very conceptual in nature and lacks details which would allow for a proper analysis of its impacts. The DEIS should be revised to include as much available details including, but not limited to, the siting of structures, utilities, and other improvements that would be necessary for the project to be considered operational, as well as a production timeline, general operating practices, alternative strategies, etc.

We note that several newspaper articles, found on the Mahi Pono website has more information regarding the Farm Plan than the DEIS has.

5. Throughout the document, the DEIS references streams in the license area, streams subject to the IIFS contested case, and streams subject to the CWRM D&O. However, the number of streams affected by the proposed action appears to not always be consistent. For example, the footnote on page iii, states that CWRM found there to be 24 streams, not 27, that were subject to the IIFS contested case. On page 1-13, the DEIS again states that Table 1-3 includes the CWRM D&O referenced 24 streams subject to the IIFS Petitions. However, Table 1-3 reflects 37 streams that are subject to the CWRM D&O. Further, Section 4.2.1, footnote 1, states that the CWRM D&O identified 36 streams associated with the license area but the DEIS identifies 37 streams within the license area. Later, however, pages 4-56 state that “[t]he license area also includes streams that were not the subject of the CWRM D&O but are diverted into the EMI Aqueduct system.” It would be helpful if there was a concise discussion that gives an overview of the streams that are within the license area and, of those streams, which streams were subject to the contested case and which streams were subject to the conditions of the CWRM D&O.
6. Why does the Executive Summary not include the calculations of the proposed water diversions when that is the primary use being proposed under the Water Lease?
7. The projections of the amount of water available from the license area at Honopou stream, after taking into account the CWRM D&O, is approximately 87.95 mgd. The

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87.95 mgd plus 4.37 from private lands total 92.32 mgd which would be conveyed to supply DWS for users in Upcountry, Nahiku and the agricultural fields in Central Maui. The 92.32 mgd does not appear, however, to consider the basal aquifer wells which delivers 4.9 mgd. Please provide a comprehensive table on the amount of water available and the amount of water sought from the specific streams and wells so the reader can have a clear picture on the amount and its specific source.

8. On October 11, 2019, the Board considered the Continuation of Revocable Permits for Water use for the Island of Maui, Hawaii, and Kauai. As a part of the consideration, the Department asked that the Board consider, as a future action, requiring A&B/EMI to make available an additional 5 mgd for use by the State for projects at Pulehunui, Maui, which includes projects for the Department of Hawaiian Homelands (DHHL). In the alternative, the Department would ask that A&B/EMI make available an additional 5 mgd of water to the County Department of Water Supply (DWS) in connection with the County providing water for the State projects at Pulehunui. The EIS should address this potential scenario as an alternative to the proposed action.
9. The second paragraph on page iii uses the acronym "IIFS" without first introducing the compound term, Interim Instream Flow Standards, however, we note that the compound term with the acronym in parenthesis is in the third paragraph on the same page. The same comment applies for the first use of "CWRM D&O".
10. Chapter 2 states that "*it is anticipated that EMI and/or Mahi Pono will continue to pursue watershed management activities.*" Please note that whoever is the applicant for the Water Lease will ultimately be held responsible for fulfilling the requirements of HRS §171-58 (e).
11. Throughout the document, it has been mentioned that community members and the like have concerns regarding the upkeep of the EMI system. Within the proposed action section (Chapter 2), the DEIS should provide some type of description regarding the existing condition of the system and any maintenance and repairs proposed should the Water Lease be granted.

We further note, at the October 11, 2019 Board of Land and Natural Resources (Board) meeting, a representative from Mahi Pono stated that Mahi Pono has plans to invest 20 million dollars over the next three years in more efficient irrigation systems. Will part of this investment be in the existing EMI system? If so, please discuss and if not, then what actions are being taken by EMI to ensure that the system being efficiently operated?

12. On page 2-10 we note that the three surface sources relied upon for Upcountry Maui via Wailoa Ditch, processed by Kamole-Weir treatment plant, totals 17.9 mgd, yet only 9.1 mgd is reliable "due to limitations and maintenance requirements." Please elaborate on this finding and what, if any, plans will address the reliability and maintenance issues.

Earl Matsukawa,
Wilson Okamoto Corporation

13. In section 2.1.3.1, we note that currently DWS is being charged 6 cents per 1,000 gallons to receive East Maui surface water for KAP and other Upcountry Maui farm areas. Notably, DWS purchases water for domestic use from EMI's West Makapipi Tunnel 2, Well No. 4806-07, known as the Nahiku Tunnel. What is the approximate annual amount charged to DWS and does the amount charged take into consideration the two aqueducts above the license area in Haiku Uka owned by DWS?
14. Within Section 2.1.4 Central Maui Field System, there is no discussion on the current activities of Mahi Pono within the Central Maui Area. Please revise section accordingly given the fact that at the October 11, 2019 Board Meeting, a representative from Mahi Pono stated that they currently have 70 acres in production for potatoes.

We wish to note that this statement was confirmed via an article published in the Star Advertiser on September 1, 2019 which also indicated that these potatoes are being grown as a "signature" crop similar to that of the Maui pineapple and the Maui onion. This appears to be contradictory to one of their core principals, which is "growing food for local consumption." Further, several times during the Board meeting, the representative stated that the food grown would be for the Hawaii market. Based on the article, it seems to infer that the "Hawaii market" may not necessarily be the local Hawaii market. Mahi Pono should make clear their intentions regarding the business aspect of their Farm Plan.

15. Regarding ALISH classifications for East Maui, the discussion surrounding this section seems to be incomplete. Based on the map provided as Figure 4-10, it appears that no ALISH lands are located within the license area, however, it is unclear if some of the beneficiaries of the Water Lease are located outside of the license area, but within an ALISH designated area. If this is so, then this should be discussed accordingly.
16. On pages 4-56 of the 2018 CWRM D&O, under the section Setting the IIFS, it is noted that "[t]his scenario represents the flow conditions as described in the CWRM D&O setting the IIFS which included 24 streams and mandated restoration of flows in all but three streams." According to the information in section 1.3.4, the CWRM D&O required that 10 streams have no diversions, 5 streams were required to return to 64% of the median base flow, and 7 streams were required to have 20% of the median base flow. This totals 22 streams. Yet 24 streams were a part of the contested case. Please explain the discrepancies amongst the referenced "three streams", on pages 4-56, 22 streams, in section 1.3.4, and 24 streams that were part of the contested case.
17. Please elaborate on why the Mahi Pono Farm Plan will not require drainage improvements especially given the need for building construction and the increase in impervious surfaces.
18. Regarding the Impact and Mitigation section regarding Climate Change for Central Maui, it is unclear how Mahi Pono plans to counteract its carbon footprint. The DEIS give the reader the impression that agricultural operations may act as a carbon sink. While

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research shows that agriculture has such potential, it is dependent on the farmer's practices and usage of a carbon farm plan, similar to that of the Marin Carbon Project, as the basis for its operations. This does not seem to be the case for Mahi Pono. Further it appears that the DEIS relies heavily on the fact that the amount of carbon produced by its proposed operations will be substantially less than what was released during sugarcane operations. The analysis should be based on current conditions and not on the historic condition of sugar, which not been in production since the beginning of 2016. Further, the analysis does not take into account any exportation of crops. Unless we are to assume that all crops produced will stay on Maui, some type of export will be required, even if that only includes interisland.

19. It is unclear why the discussion on sea level rise only took into account passive flooding as the State's Hawaii Sea Level Rise Vulnerability and Adaptation Report recommends using the sea level rise exposure area (SLR-XA) as the baseline for discussion.
20. Regarding the discussion for Central Maui under the hurricane and wind hazards section, it is stated that "*the proposed action does not include any construction in Upcountry Maui that would be at risk in the event of hurricanes and wind hazards.*" Does this imply that the KAP expansion has no associated structures?
21. Seismic hazards for Central Maui should address construction related to the Mahi Pono Farm Plan.
22. For the mitigation associated with the maintenance of the East Maui system, who is responsible for ensuring that the qualified biological monitor or inspector meets all the specifications as represented in the avoidance and minimization measures proposed as mitigation for impacts to flora? How will runoff from the washing areas be disposed of/mitigated/controlled?
23. For impacts and mitigation for flora in Central Maui, a discussion regarding any clearing, grading, or grubbing activities associated with the Mahi Pono Farm Plan should be included.
24. For impacts and mitigation of fauna in East Maui, mitigation measures should pertain to only maintenance activities as no land uses or construction is being proposed. Specifically, the DEIS notes that the use of barbless top-strand wire is recommended for all fence construction to avoid entanglement of the Hawaiian hoary bat. No fence construction was discussed as a part of the proposed action; therefore, this mitigation measure does not appear to apply. Further, tree removal would not be considered a maintenance activity unless it poses a risk to public health, safety, and welfare. In addition, please note that as the EMI system is located within the State Land Use Conservation District EMI is encouraged to speak with the Staff of the Office of Conservation and Coastal Lands to ensure proper permits and or approvals are received prior to conducting any work in the Conservation District. In addition, you state that the Modified Lease Area alternative may have a significant effect on flora, fauna, and

Earl Matsukawa,
Wilson Okamoto Corporation

- invertebrate species due to an increase in public access. Please include a discussion on how EMI currently maintains public access.
25. In the Historic Resources section, the DEIS states that the Modified Lease Area alternative may have the potential to impact historic properties if there is an increase in unmanaged public access to the license area. Please include a discussion regarding the specific historical sites you believe will be impacted by this alternative.
 26. The impacts and mitigation measures section related to fauna in Central Maui appears to overlook that the proposed buildings could have potential impacts to fauna resources as grubbing and grading are normally associated with site preparation. Please revise your discussion accordingly. In addition, there seems to be a missing transition between pages 4-105 and 4-106.
 27. Regarding Historic and Archaeological Resources, Hawaii's State Historic Preservation Division (SHPD) confirmed to the Department via an email dated September 24, 2019, that their review of the proposed action confirmed "no historic properties [will be] affected". This determination was based on the absence of ground disturbance activities. However, we note that as benefitters of the Water Lease, the Mahi Pono Farm Plan and the KAP expansion will necessitate ground disturbance and therefore be subject to SHPD's 6E Historic Preservation Review Process during their permitting processes.
 28. In the Cultural Resources and Practices section, it should be clearly noted that the information gathered from community consultations happened prior to the issuance of the CWRM D&O in 2018, and that many of the concerns are being addressed through the IIFS.
 29. In the Social Characteristics section for East Maui, under Impacts and Mitigation, it is mentioned that there should be a reconciliation with the Keanae-Wailuanui community. Why is A&B not listed as one of the key players? Also, who is responsible for leading this effort?
 30. In the Social Characteristics section, we note that under the Impacts and Mitigation section for Upcountry Maui and Central Maui, it is recommended that interest groups or stakeholder groups be defined and that a core working group be established to work collaboratively with Mahi Pono should the Water Lease be approved. However, it is unclear who is supposed to spearhead this working group, who is supposed to fund this working group, and how Mahi Pono will be held accountable for not only participating in this working group, but also seriously considering and/or implementing the recommendations of the working group.
 31. It is unclear why the economic and fiscal section, as well as the agricultural economy section of the DEIS, analyzed "typical sugarcane cultivation" versus "recent sugarcane cultivation." While we understand that the sugarcane industry can provide a somewhat relevant baseline, the "typical sugarcane cultivation" has not existed in the last 13 years.

Earl Matsukawa,
Wilson Okamoto Corporation

At some point this was no longer the norm and it would probably be better to set the baseline at “recent sugarcane cultivation.”

32. Regarding the economic and fiscal impacts, the proposed action and the East Maui Impacts should be combined into one section as that is how the DEIS is organized. For Upcountry Maui, the economic and fiscal impacts from the KAP expansion should be included in the discussion. Regarding Central Maui, it should be noted that the economic and fiscal impacts from Mahi Pono’s solar farm could be excluded or considered a separate project not reliant on the Water Lease, as the solar farm could conceivably exist without the water license. Also, while the Mahi Pono Farm Plan anticipates that 790 jobs would be created, there is concern regarding how those positions will be filled and by who as Hawaii’s unemployment rate as of April 2019 is 2.8%.

Further, at the October 11, 2019 Board Meeting, a representative from Mahi Pono stated that 700 to 1,000 jobs may be created via their Farm Plan. The upper limit number is much larger than the analyzed 790 jobs. You may need to revise the studies accordingly if 1,000 jobs is a plausible employment projection for the project.

33. Regarding recreational resources in Central Maui, we note that the Maui Raceway park was not included.
34. We also note that under the Central Maui section, there is no discussion of how visual plains may change due to the solar farm or the proposed buildings.
35. Regarding the traffic section, not enough information has been provided to fully understand the impact of the Mahi Pono Farm Plan at full build out and a traffic impact study was not conducted so we are unsure how the conclusion was made that there will be minimal impacts on traffic on public roadways. This may also apply to the KAP expansion depending on the number of jobs created.
36. Regarding wastewater, the DEIS does not discuss the impact that the Mahi Pono Farm Plan will have on existing wastewater infrastructure. This should be discussed as they anticipate 790 jobs to be created and there are buildings which will most likely contain restroom facilities. It is also unclear how field workers would access toilet facilities and where. This should also be analyzed for the proposed KAP expansion.
37. Regarding electricity, the DEIS does not discuss the impact that Mahi Pono Farm Plan will have on the existing electrical grid except for that the energy generated from their commercial solar farm will be provided to Maui Electric Company (MECO). There is no discussion on whether they will be buying back energy from MECO to power their operations (including the proposed buildings) or be self-sustainable and rely solely on their solar panels. This should also be analyzed for the proposed KAP expansion.

Earl Matsukawa,
Wilson Okamoto Corporation

38. Section 5.1.3 State Land Use District mentions that the license area is located within the Conservation District, but the subzone and its objectives are omitted from needed discussion.

We trust that the grammatical errors throughout the DEIS will be corrected in the final EIS. While these comments are many, we note that the EIS Preparation Notice was published in the February 8, 2017 edition of the Office of Environmental Quality Control's *The Environmental Notice* and therefore did not cover the Mahi Pono Farm Plan nor the KAP expansion, since these land acquisitions did not take place until 2018. This would naturally explain the void in the DEIS and our substantial comments found herein. In addition, given our extensive comments on the document, we believe that once the deficiencies are addressed, the DEIS should be republished as a second DEIS in order to allow the public to have an opportunity to comment on any new/additional information provided regarding the project(s).

Should you have questions or concerns regarding our comments, please contact Lauren Yasaka at (808) 587-0431.

Sincerely,



RUSSELL Y. TSUJI
Land Division Administrator

cc: Central Files



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Mr. Russell Tsuji
Administrator
Land Division
Department of Land and Natural Resources
State of Hawai‘i
P.O. Box 621
Honolulu, HI 96809

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Tsuji:

Thank you for your comment letter dated October 15, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns, which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The responses below are provided to your comments on the subject Draft EIS.

Comment 1: *Please clarify the cumulative impacts of Mahi Pono's proposed diversified agriculture project, the Kula Agricultural Park (KAP) expansion, the Nahiku Community potable water usage, and the County's Upcountry Maui Water System as it relates to the proposed action (EMI Water Lease or Water Lease). While this point is relatively clear in the executive summary, it becomes muddled throughout the DEIS.*

Response 1: The Proposed Action that is under review in this EIS is explained in Section 2.1 of the Draft EIS which states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the “right, privilege, and authority to enter and go upon” the Lease Area for the “purposes of developing, diverting, transporting, and using government owned waters” through the existing EMI Aqueduct System which supplies

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water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System. It will also allow the continued provision of water to approximately 30,000 acres of agricultural lands (formerly in sugarcane) in Central Maui.

Thus, the Proposed Action that is reviewed throughout the Draft EIS contemplates the uses of water you cite (i.e. diversified agriculture, water supplied to the Upcountry Maui Water System, and to the Nāhiku community). Secondary and cumulative impacts are discussed in Section 4.16 (Section 4.17 of the Final EIS) of the Draft EIS, and not only in the Executive Summary. Moreover, those impacts are analyzed throughout Chapter 4 (Description of Existing Environment, Impacts, and Mitigation Measures), which provides a description not only of the impacts in the location of the primary action, i.e., the License Area, but also of the areas proposed to utilize waters to be delivered through the EMI Aqueduct System, or that are otherwise reliant upon the issuance of the subject Water Lease. Those use areas are the Upcountry Maui area, including the Kula Agricultural Park (KAP), the Nāhiku community served by the Maui department of Water Supply (MDWS), and the Central Maui agricultural fields where the Mahi Pono farm plan will be implemented. The environmental topic areas addressed in Chapter 4 also address each use area, which are identified in separate subsections - East Maui, Upcountry Maui, and Central Maui. For example, for each environmental aspect that is described and analyzed, such as groundwater, Chapter 4 includes an assessment of the potential environmental impacts within the East Maui License Area including the Nāhiku community, followed by a discussion of impacts in the MDWS Upcountry Maui Service Area, and then by a discussion of impacts in Central Maui agricultural fields. That format is used consistently throughout Chapter 4.

Please note that the boundaries of these areas are discussed at the very start of Chapter 4 of the Draft EIS. For additional clarity, that same information has been added to the Executive Summary of the Final EIS at pages iii to iv

In response to your comment, the summary discussion of secondary and cumulative impacts in Section 4.17 has been revised for clarification. Similarly, Section 4.18 (Summary of Direct, Secondary and Cumulative Impacts) has been revised as follows (see FEIS page 4-335 to 4-336):

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The Proposed Action is the award of a 30-year Water Lease. The lessee will conduct or authorize:

- *Management of the diversion of water by the EMI Aqueduct System consistent with the CWRM D&O, thereby establishing how much water will remain in the Petitioned HFS and Non-Petitioned non-HFS streams that have historically been diverted and how much water may be diverted for other uses; and,*
- *EMI access to maintain the EMI Aqueduct System;*

The direct, secondary, and cumulative effects of the Proposed Action and the sections of the DEIS in which the impacts are discussed include:

- *Direct ~~Impacts~~ impacts are the impacts to the natural environment as a result of changes in streamflow in the License Area - Section 4.2.1 Surface Waters, 4.2.3 Coastal Waters, 4.2.2 Groundwater, and Sections 4.4.1 and 4.4.2 Flora and Fauna.*
- *Direct ~~Impacts~~ impacts also involve the impacts to those who would use water from the HFS License Area streams, including for traditional agriculture as well as traditional cultural resources and practices related to streamflow in the HFS License Area streams – Section 4.6 Cultural Resources and Practices – as well as recreational users of the License Area or in the vicinity of the License Area (Section 4.8 Recreational Users and Park Facilities), in part depending upon the ultimate geographical extent of the License Area approved by BLNR.*
- *Secondary ~~Impacts~~ impacts are the impacts to consumers of water from the EMI Aqueduct System as served by the MDWS, including residential and agricultural uses in Upcountry Maui and Nāhiku – Section ~~3~~ 4.15.1 Water System.*
- *Secondary impacts are impacts to MDWS customers within Nahiku whose continued water service is contingent upon the Proposed Action (Water Lease) or continued revocable permits.*
- *Secondary ~~Impacts~~ impacts are the impacts of using water from the EMI Aqueduct System to develop diversified agriculture in Central Maui – Section 4.7 Socio-Economic Characteristics and Section 4.4 Flora and Fauna.*
- *Cumulative impacts are the impacts of diverting East Maui stream water through the EMI Aqueduct System for the Proposed Action over the long-term, which will be similar to the existing environmental conditions that are described in Chapter 4, as a result of the EMI Aqueduct System's diversion of water from the License Area streams for over a century, but under the Proposed Action the permitted diversion amounts will be less than what was*

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historically diverted from those streams due to the flow restoration requirements under the CWRM D&O.

Comment 2: *Please confirm whether the KAP expansion is reliant on the EMI Water Lease. While the KAP expansion is referenced throughout the DEIS, the project description and analysis omits relevant water calculations and is silent on the expansion's cumulative impacts. According to the DEIS, KAP currently requires 1.5 mgd, however the DEIS fails to specifically address the amount of water the KAP expansion will require.*

According to a Maui News Article from January 3, 2019, "an agreement with A&B will provide an additional 1 million gallons of water a day to the new land." Please provide clarity and further analysis regarding the additional water needed and expand on its cumulative impacts.

Response 2: The KAP expansion is a County project; any reservoir or other water system improvements related to that action are entirely the responsibility of the County and are not part of the EMI Aqueduct System. The Applicant here is not and will not be seeking approvals to pursue the KAP expansion. The 262 acres that the County of Maui acquired in 2018 to expand the KAP are lands that had long been used for agricultural purposes (to farm sugarcane). The lessee under the Water Lease is not anticipated to have any involvement in the timing or use of the KAP expansion area, as that is entirely within the jurisdiction and authority of the County of Maui.

With respect to your comment that the Draft EIS omits relevant water calculations for the KAP expansion, please note that the Draft EIS provided information about the amount of water used at KAP and the source of water for the KAP expansion area in a number of sections. Section 2.1.3.2 of the Draft EIS states:

Presently, water demands at KAP are served by the County, which, by contractual agreement, is able to draw up to 1.5 mgd from the end of the Hāmākua Ditch and to utilize a former plantation reservoir to serve KAP. As noted previously, the Ditch is fed directly by the EMI Aqueduct System through the Wailoa Ditch. As of late 2015, the Maui County Office of Economic Development calculated that the current use for the KAP is approximately 548,191 gpd of which 80-90 percent of delivered water is from surface water sources with the remaining portion from basal aquifer wells. Due to the current design of the County's KAP distribution system (pump system in the reservoir), 1.5 mgd must be delivered to the County in order for it to provide the needed 548,191 gpd to the KAP users.

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Section 4.7.4 of the EIS notes that in 2017, of the water delivered to MDWS through the EMI Aqueduct System, "About 0.46 mgd were for crops at the KAP, however, 1.5 mgd had to be supplied by the EMI Aqueduct System to produce the 0.46 mgd used by the farmers."

Moreover, the Draft EIS explains that the water delivery agreements in place with MDWS, which include water delivery for the KAP, are contingent upon issuance of the Water Lease. Section 3.3 of the Draft EIS states:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS. At this point in time, it is unknown whether sufficient groundwater resources exist in Upcountry Maui to meet these water demands. It is anticipated that the development of alternative water-source infrastructure would be prohibitively expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment.

Appendix H (Economic and Fiscal Impact Study) and Appendix I (Agricultural and Related Economic Impacts) further provide:

Under the Proposed Action, EMI will continue to supply water to the MDWS for Upcountry Maui, including for agricultural water use. It is also noted that as part of the County's purchase of the 262-acre expansion of the KAP, EMI has agreed to supply the water for the expansion. The additional water will come from water savings due to infrastructure improvements to the reservoir and pumps that serve the KAP that will reduce system losses (Plasch Econ Pacific, LLC, 2019). The actual amount of water delivered from the EMI Aqueduct System is not anticipated to increase in order to serve the 262-acre expansion.

Appendix H, Section B-2a and Appendix I, Section 6b of the Draft EIS provides:

In 2018, A&B sold 262 acres to the County for the expansion of the Kula Ag Park, and agreed to supply the MDWS with 1 mgd of surface water from the EMI System to meet the needs of the expansion area, subject to the continuation of State permits or issuance of the Water Lease. The needed water allocation will result from infrastructure improvements to the reservoir and pumps that serve the Ag Park, and use existing deliveries from the EMI System more efficiently. Thus,

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the current level of water deliveries to the Kula Ag Park will suffice for both the existing and expanded Kula Ag Park areas.

This text has been added to Section 2.1.3.2 of the Final EIS at pages 2-20 to 2-21

Clearly the Maui News article from January 3, 2019, that you mentioned was incorrect. Under the Proposed Action it is assumed that the EMI Aqueduct System will continue to supply water that gets used at KAP, as well as the 262-acre KAP expansion.

Regarding your comment that the Draft EIS was silent about the cumulative impacts of the KAP expansion, they were considered in the Draft EIS. It is assumed that the expansion would serve to increase commercial farming in Upcountry Maui. The cumulative impacts of the expansion would be related to economic and fiscal impacts and are covered in Section 4.7.4 of the Draft EIS relating to Upcountry Maui. Specifically, Section 4.7.4 states:

A continuation of water supplied through the EMI Aqueduct System to serve Upcountry Maui, as planned under the Proposed Action, is projected to result in some 1,520 acres of farmland being irrigated by that source in 2030.

A continuation of water delivered through the EMI Aqueduct System to MDWS is assumed as part of the Proposed Action. Therefore, it is anticipated that the 262-acre expansion of KAP would go forward. That land would have to be converted from fallow sugarcane fields to productive fields for diversified agriculture, with an estimated cost of \$1.3 million. Related indirect sales are projected at \$320,000 per year over a 5-year period. Thus, expenditures plus indirect sales are expected to average approximately \$600,000 per year, and cumulative State tax revenues associated with this conversion would be approximately \$200,000.

Overall, farming in Upcountry Maui is expected to increase due to the KAP expansion. KAP farms and others in Upcountry Maui who will rely on water from the EMI Aqueduct System are projected to produce an estimated 15.1 million pounds of crops per year. Annual farm sales are expected to reach about \$15.1 million, and indirect sales about \$13.4 million. Total direct-plus-indirect sales will be about \$31.8 million per year, of which about \$26 million will be on Maui and about \$5.9 million on O'ahu. About \$3.2 million of consumption expenditures would be subject to the excise tax on final sales, and about \$28.6 million subject to the excise tax on intermediate sales. Rents paid to the County would total about \$900,000 per year. Profits from farm operations and indirect sales are expected to reach about \$3.2 million per year.

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Employment will increase due to the KAP expansion. By 2030, farmers who rely on water from the EMI Aqueduct System are expected to provide about 100 jobs and generate about 50 indirect jobs, for a total of about 150 jobs. The payroll is expected to reach about \$3.5 million for the direct jobs and \$5.8 million for all direct and indirect jobs. The direct and indirect jobs provided will support an estimated 330 residents living in about 140 homes, with about 300 residents and 130 homes on Maui.

State taxes generated from Upcountry Maui farms that rely on water from the EMI Aqueduct System would generate about \$54,000 per year in State taxes. For the County, property taxes plus rents paid to the County by farmers at the KAP would total about \$85,000 per year. Most of the increase from 2017 would be due to the additional rental income from the anticipated KAP expansion.

Because the KAP expansion area had been used for commercial agricultural for decades (when it was farmed by A&B for sugarcane) no significant impacts are anticipated from continued agricultural activities in that area.

Comment 3: *While our comments above note that the cumulative results of users benefitting from the Water Lease should be addressed, we wish to point out that pursuant to Hawaii Revised Statutes (HRS), Chapter 343, and Hawaii Administrative Rules (HAR) Chapter 11-200.1, an environmental assessment is required for actions that "[p]ropose the use of state or county lands... " The definition of land as it relates to public lands, pursuant to HRS Chapter 171, "includes all interests therein and natural resources including water, minerals, and all such things connected with land, unless expressly provided. "*

As the Mahi Pono Farm Plan involves the use of State lands (75% of the water being requested in this case), and plays a large role in the cumulative impacts of the proposed Water Lease, and the KAP expansion encumbers both State and County lands as well as County funds, the DEIS should cover all actions (acquisition of a water lease, farm plan and expansion) as part of its proposed action.

Response 3: As a point of clarification, this EIS is not prepared under the new EA/EIS Hawaii Administrative Rules Chapter 11-200.1 that you cite. This EIS is grandfathered under the prior rules, HAR Title 11, Chapter 200.

We acknowledge that water can be viewed as "State lands" in the context of HRS Chapter 343, and the use of State lands is a trigger for environmental review under HRS § 343-5(a). It is for

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that very reason that an EIS is required before the BLNR can offer a State water lease at public auction. However, equally important to that analysis are the requirements under HRS § 343-5(e) that sets forth the required process “whenever an **applicant** proposes an **action** specified by subsection (a) that requires **approval of an agency** and that is not a specific type of action declared exempt under § 343-6[.]” Under HRS § 343-2, an "action" is a program or project to be initiated by an agency or an applicant. An "applicant" is “any person who, pursuant to statute, ordinance, or rule, officially requests approval for a proposed action,” and the term “approval” means “a discretionary consent required from an agency prior to actual implementation of an action.” Thus, the requirements of HRS Chapter 343 call for there to be an action, a trigger (such as use of State lands), and a discretionary consent. The only applicant “action” at issue here is the proposed Water Lease because that is the only matter for which agency (i.e., BLNR) "approval" is being sought. The act of farming the Central Maui agricultural fields, which are privately owned and have been farmed for decades, does not trigger requirements under Chapter 343, HRS.

The Mahi Pono farm plan will take place entirely on privately owned lands and its implementation is not an "action" because it does not require approval from an agency. Activities that the County may or may not undertake on its property at the KAP expansion area are entirely outside of the control of the Applicant. The Applicant is not involved in any way with existing for future uses at KAP or the expansion area. Nor is the Applicant seeking any agency approvals related to the KAP expansion area. The County of Maui is solely responsible for the use of that land as well as for complying with any and all regulatory requirements that may arise from the County's use of that land. Nevertheless, as noted in Response #1, the EIS fully considers all direct or primary impacts of the Water Lease, i.e. the Proposed Action, along with associated indirect or secondary impacts and cumulative impacts. The impacts of the implementation of the Mahi Pono farm plan, and the potential farming impacts of the KAP expansion, are thus assessed in the EIS in Chapter 4. The structure of Chapter 4 of the Draft EIS consistently addresses environmental impacts within three distinct geographic areas, East Maui (the location of the Water Lease), and the two water use areas - Upcountry Maui and Central Maui. Cumulative impacts are thus addressed within the EIS. Moreover, a summary of cumulative impacts is within Section 4.16 of the Draft EIS (which is Section 4.17 of the Final EIS). Please see Final EIS pages 4-331 to 4-336.

Comment 4: *Regarding the Mahi Pono Farm Plan, we note that it is very conceptual in nature and lacks details which would allow for a proper analysis of its impacts. The DEIS should be revised to include as much available details including, but not limited to, the siting of structures, utilities, and other improvements that would be necessary for the project to be considered operational, as well as a production timeline, general operating practices, alternative strategies,*

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etc. We note that several newspaper articles, found on the Mahi Pono website has more information regarding the Farm Plan than the DEIS has.

Response 4: The Mahi Pono farm plan is expressly intended to be conceptual as described in the Executive Summary and Section 2.1.4:

Mahi Pono’s farm plan as described in this Draft Environmental Impact Statement (DEIS) is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e. orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community. Mahi Pono’s goals for its diversified farm plan in Central Maui will be guided by its core principles of using reasonable and environmentally responsible “best management practices” (BMP), planting non-GMO crops, and growing food for local consumption. For the purpose of this DEIS, Mahi Pono’s Farm Plan projects use of the total amount of water available after compliance with the IIFS requirements of the CWRM D&O, although it is understood that the Department of Hawaiian Home Lands (DHHL) will eventually convert its water reservation to active use.

Any project of the size, scope and timetable as the Mahi Pono farm plan will undergo changes during its lifecycle. The information included in the Draft EIS and the Final EIS represents the general plan for the agricultural project, based on best information known at this early stage of the implementation of the Mahi Pono long-term farm plan. Given the nature of implementing an extensive diversified agricultural farming operation as proposed by Mahi Pono, from scratch, in a new market and with many factors out of its control, there will undoubtedly be changes and adjustments .

The Proposed Action is the issuance of the Water Lease that allows diversions of waters from State lands. However, the EIS addressed not only the direct impacts of the Water Lease, it also took into consideration the impacts of the Mahi Pono farm plan in Central Maui, as a proposed user of the diverted water. The implementation of Mahi Pono’s farm plan and vision for cultivation of the Central Maui fields will be a flexible and iterative process responsive to changing circumstances over the years. For more details see Section 2.1.4 of the EIS.

It should also be noted that implementation of the Mahi Pono farm plan has begun, and progress continues to be made. Section 2.1.4 of the Final EIS (pages 2-30 and 2-32) has been amended to

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include information on Mahi Pono's recent and near-term projected water usage and agricultural activities.

Section 2.1.4 and Appendix I provide projections of acreages of cultivation by crop in 2030, the projected timeframe for full cultivation of the Central Maui agricultural fields. This information is consistent with information provided in press releases and public meetings by Mahi Pono.

While Mahi Pono will install new in-field irrigation systems, it will continue to use the existing irrigation infrastructure that brings water to the border of each individual field. Mahi Pono will also continue to use the existing electrical transmission lines, and will use existing buildings to the extent possible. The siting of new buildings and utilities will be determined as the farm plan develops over time. Regarding your comment about general operating practices, as noted in the Draft EIS, Mahi Pono will incorporate applicable best management practices (BMPs) approved by the State of Hawai'i Department of Health, the State of Hawai'i Department of Agriculture, the U.S. Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion. In response to public comments on the Draft EIS, the following additional information has been added to the Final EIS at Section 4.2.1, pages 2-25 to 2-27, regarding Mahi Pono's water saving strategies for the Central Maui agricultural fields including the following:

- Planting windbreaks in the fields.
- Incorporating significant uses of weed mat along plant lines, which will reduce evapotranspiration and erosion.
- Mowing rather than plowing inter-rows to preserve organic matter and keep cover to prevent soil erosion.
- Operating within the terms of a Conservation Plan from NRCS, which includes swales and diversions for erosion protection,
- Practicing rotational grazing of livestock,
- Planting permanent tree crops that will develop canopies that will assist with soil moisture retention and reduce evapotranspiration.

Mahi Pono's farm plan and its impacts are based on a production timeline of full operations by 2030. It is explained in Section 2.1.5 of the EIS that it will take approximately 10 years for Mahi Pono and its lessees to properly prepare their lands for cultivation including actions to remove volunteer sugarcane and weeds, amend soils, install field improvements, build the any needed agricultural structures, and plant crops. The predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. The approach to estimating impacts and the

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level of detail are consistent with EIS requirements. The Central Maui agricultural fields now owned by Mahi Pono have been used for intensive agricultural purposes for generations.

Regarding alternative strategies, the EIS also includes a description of a farm plan that could be implemented without the Water Lease. The EIS includes discussions of the impacts of that farm plan on various environmental conditions. See Section 3.4.12 and Section 3.4.13 of the EIS, which includes a discussion of the economic, fiscal, and agricultural impacts of a no Water Lease farm plan, and see Table 3-2 at pages 3-49 to 3-80, which provides a summary comparison of the impacts of the various alternatives, including the no Water Lease alternative.

We do not know what newspaper articles you are referring to with respect to greater details on the Mahi Pono farm plan. There are articles related to planting potatoes, and references to lemons, limes, oranges, mandarins, avocados, papaya, coffee and macadamia nut crops. All of these crops are covered in the Mahi Pono farm plan. As discussed, the Mahi Pono farm plan is intended to and will continue to evolve, as any realistic and responsible farming plan of this size and scope would need to do, to be sustainable.

Comment 5: *Throughout the document, the DEIS references streams in the license area, streams subject to the IIFS contested case, and streams subject to the CWRM D&O. However, the number of streams affected by the proposed action appears to not always be consistent. For example, the footnote on page iii, states that CWRM found there to be 24 streams, not 27, that were subject to the IIFS contested case. On page 1-13, the DEIS again states that Table 1-3 includes the CWRM D&O referenced 24 streams subject to the IIFS Petitions. However, Table 1-3 reflects 37 streams that are subject to the CWRM D&O. Further, Section 4.2.1, footnote 1, states that the CWRM D&O identified 36 streams associated with the license area but the DEIS identifies 37 streams within the license area. Later, however, pages 4-56 state that "[t]he license area also includes streams that were not the subject of the CWRM D&O but are diverted into the EMI Aqueduct system." It would be helpful if there was a concise discussion that gives an overview of the streams that are within the license area and, of those streams, which streams were subject to the contested case and which streams were subject to the conditions of the CWRM D&O.*

Response 5: To address your comment we have made certain changes to terminology within the Final EIS. For example, the term "non-IIFS streams" has been revised for clarity to "non-petitioned streams" meaning those streams within the License Area that were not included in the 2001 IIFS Petitions filed by Native Hawaiian Legal Corporation (NHLC). The streams subject to the IIFS contested case, and the streams subject to the Commission on Water Resources Management (CWRM) Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O), are all petitioned streams.

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Table 1-3 of the Draft EIS is intended to be the list of all the streams that are within the License Area, and has been revised to be more clearly titled and to note which streams are petitioned streams and which are non-petitioned streams and, for the former category, what the CWRM IIFS decision was for those petitioned streams. See Final EIS pages 1-19 to 1-22. Table 1-3 has been renamed “Streams in the License Area”; the fourth column has been renamed from "Subject to IIFS" to “Petitioned Streams”, and the fifth column has been renamed from "Restoration Status" to “CWRM Ordered Restoration Status”.

We agree that there are inconsistencies with the number and naming of streams. This also occurs within the CWRM D&O and other public sources of information. We have tried to reconcile the information as best we could. The discrepancies in the stream numbers are often due to terminology. In some cases, the tributaries are considered part of the same stream; in other cases, the tributary is listed separately. For example, Table 1-3 includes the same 36 streams identified by the CWRM as being in the License Area, except it separately lists two tributaries of streams that the CWRM included as part of the main streams (noted as #8A and #33A in Table 1-3), and adds one additional tributary that is in the License Area but was not identified by CWRM in the D&O (Puakea, #6 in Table 1-3). However, please note that in the Draft EIS Puakea was considered a separate stream but was later found to be a tributary to Pa‘akea Stream. This accounts for why Table 1-3 has 39 listings (36 streams plus three tributaries) as compared to the 36 streams listed in CWRM D&O at Finding of Fact (FOF) 58.

Moreover, as explained in Section 1.3.3 of the Draft EIS, in 2001 NHLC filed 27 petitions with CWRM, seeking to amend the IIFS for 27 streams. However, during the CWRM proceedings it was determined that only 24 of the 27 streams identified by NHLC were in fact streams. Waikani, which NHLC had identified as a stream, is not a stream but rather a waterfall on Wailuānui Stream as determined by the CWRM. Alo, which NHLC had identified as a stream, is a tributary of Waikamoi Stream as determined by the CWRM. Similarly, Pua‘aka‘a is a tributary of Kopili‘ula Stream, and not a separate stream itself. This is addressed in EIS footnote 7 in Section 1.3.4 of the Draft EIS as follows:

The difference being that (i) Waikani is not a stream but a waterfall of Wailuānui Stream; (ii) Alo is a tributary of Waikamoi Stream; (iii) Pua‘aka‘a is a tributary of Kopili‘ula Stream; and (iv) Pi‘ina‘au and Palauhulu are separate streams that join together before reaching the ocean (CWRM D&O, FOF 56).

Comment 6: *Why does the Executive Summary not include the calculations of the proposed water diversions when that is the primary use being proposed under the Water Lease?*

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Response 6: For additional clarity, a statement regarding the calculations of the estimated water diversions under the Proposed Action has been added to the Executive Summary of the Final EIS at page viii. However, this information was discussed in detail in Section 2.1.2 of the Draft EIS. Moreover, for clarity, the following table has been added to Section 2.1.2 on page 2-12 of the Final EIS and to the Executive Summary at page viii.

Comment 7: *The projections of the amount of water available from the license area at Honopou stream, after taking into account the CWRM D&O, is approximately 87.95 mgd. The 87.95 mgd plus 4.37 from private lands total 92.32 mgd which would be conveyed to supply DWS for users in Upcountry, Nahiku and the agricultural fields in Central Maui. The 92.32 mgd does not appear, however, to consider the basal aquifer wells which delivers 4.9 mgd. Please provide a comprehensive table on the amount of water available and the amount of water sought from the specific streams and wells so the reader can have a clear picture on the amount and its specific source.*

Response 7: It is not clear from your comment if you are asking about the basal aquifer wells that service the MDWS Upcountry Maui Water System, or if you are asking about the wells that service the Central Maui agricultural fields. Therefore in this response we address both of these entirely separate water sources.

With respect to the MDWS Upcountry Maui Water System, it is recognized in Section 2.1.3.1 of the Draft EIS that 10-20 percent of the water delivered through the MDWS Upcountry Maui Water System comes from basal aquifer wells owned by MDWS. We acknowledge that the Draft EIS indicated that those wells delivered 4.9 mgd. However, this statement is incorrect and has been corrected in the Final EIS at page 2-17 as follows:

Together, ~~These four~~ these three wells account for a total of about ~~4.9~~ 3.3 mgd of water production capacity delivered. However, it should be noted that the CWRM D&O mistakenly (CWRM D&O, FOF 808) states that there are two Kaupakalua Wells and that the pumping capacity of Po'okela Well is 1.3 mgd rather than 1.2 mgd as noted by the MDWS in Appendix P.

The figure, which was taken from the CWRM D&O, represented the production capacity of the County's Upcountry wells, and not the delivery amount. Further, pursuant to a letter from the MDWS dated July 24, 2020 (see Appendix P of the Final EIS), the actual production capacity of the County's Upcountry wells is 3.3 mgd, not 4.9 mgd. The MDWS letter further notes that 1.2 mgd of this 3.3 mgd of production capacity is back-up source used only during periods of drought or periods of repair and maintenance at the Upcountry water treatment facilities. The

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following corrections and clarifications to Section 2.1.3.1 have been made in the Final EIS after we received additional information from MDWS on pages 2-13 to 2-20.

None of these County wells are within the License Area. The County of Maui's ability to continue to make use of these wells is assumed in the EIS; the use of these wells is not contingent upon the Water Lease.

The remaining 80-90 percent of water delivered through the Upcountry Maui Water System comes from three surface water sources, one of which is the Kamole-Weir Water Treatment Plant (WTP), which is sourced directly by the Wailoa Ditch of the EMI Aqueduct System as explained in Section 2.1.3.1 of the Draft EIS.

An entirely different topic is the irrigation wells that supply brackish water to the Central Maui fields. Section 4.2.2 of the EIS, pertaining to Groundwater, in the Central Maui subsection, explains that under the Water Lease with full amount permitted under the CWRM D&O, 21.31 mgd of brackish groundwater is assumed to be pumped out of the underlying aquifers to supplement the surface irrigation water supplied from the East Maui streams. This estimated usage of groundwater, as well as historical usage from the Central Maui aquifers, is far in excess of the currently established Sustainable Yield of those aquifers. As explained in Section 3.1.1.1 of the Draft EIS, past pumping rates were achievable due to the large amount of recharge that was occurring when sugar was being cultivated and irrigated by surface water. Under the CWRM D&O and the proposed Mahi Pono farm plan, considerably less East Maui stream water will be available to irrigate the lands overlying these Central Maui aquifers that source the brackish water irrigation wells, and thus the recharge will be significantly less, very likely negatively affecting the available yield and the quality of water from these brackish water wells.

Regarding your request for a comprehensive table that indicates the amount of water from the specific streams, please note that data does not exist on a stream-by-stream basis. Also, the streams that are diverted by the EMI Aqueduct System are extremely flashy. In addition, one portion of the License Area could be completely dry, while another portion experiences heavy rainfall. Thus, stream diversions amounts are measured at Honopou Stream, the point at which the EMI Aqueduct System leaves the License Area, and at Māliko Gulch, where the EMI Aqueduct System stops diverting water. However, in response to your comment, as presented in Response #6 above, Table 2-1 has been added to the Final EIS showing the amount of water that is proposed for diversion from the License Area, the stream water to be diverted from outside of the License Area, and the amounts that are proposed to be used by MDWS in the Upcountry Maui Water System, and by Mahi Pono.

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Comment 8: *On October 11, 2019, the Board considered the Continuation of Revocable Permits for Water use for the Island of Maui, Hawaii, and Kauai. As a part of the consideration, the Department asked that the Board consider, as a future action, requiring A&B/EMI to make available an additional 5 mgd for use by the State for projects at Pulehunui, Maui, which includes projects for the Department of Hawaiian Homelands (DHHL). In the alternative, the Department would ask that A&B/EMI make available an additional 5 mgd of water to the County Department of Water Supply (DWS) in connection with the County providing water for the State projects at Pulehunui. The EIS should address this potential scenario as an alternative to the proposed action.*

Response 8: Your comment regarding the DLNR staff recommendation to the BLNR is acknowledged and we further acknowledge that the 2020 permits approved by the BLNR at its October 11, 2019 meeting did not include any conditions regarding water for the State's project at Pulehunui, Maui. With respect to the EIS, Section 3.2.1 of the Draft EIS included an analysis of the scenario(s) where the Water Lease is issued for an amount less than the amount available after compliance with the CWRM D&O (the Proposed Action). This scenario is identified as the Reduced Water Volume alternative throughout Chapter 3 of the EIS, which is the chapter that assesses alternatives to the Proposed Action, including the alternative of No Action. The less water available for diversified agriculture in Central Maui (for whatever reason), the greater the expected reduction in the amount of water that the EMI Aqueduct System would provide for the agricultural uses of the Central Maui fields. In that way, the effects of lesser amounts of water being available for the Water Lease lessee, whether due to the DHHL reservation or otherwise, have been addressed through the EIS.

Section 13c of the Agricultural and Related Economic Impacts assessment (Appendix I) in the Draft EIS explains the anticipated impacts in Central Maui and Upcountry Maui from each 1 mgd reduction in water. This is also addressed in the Central Maui subsection of Section 3.4.13 of the Draft EIS:

The Reduced Water Volume alternative has the potential for a significantly adverse effect on agriculture production in Central Maui and the related economic impacts. For each 1 mgd less of surface water made available to the Central Maui fields, there is a related reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture, a reduction in direct sales on Maui of about \$1.7 million per year, a reduction in direct and indirect jobs on Maui and Oahu and a reduction in State revenues of about \$50,000 per year.

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For illustration, if the Water Lease permitted diversions in the amount of 70 mgd (an estimated 22.32 mgd reduction from the Proposed Action), there would be 189 fewer jobs than expected under the Proposed Action (604 jobs under the Reduced Water Volume if diversions of 70 mgd were permitted v. 793 jobs under the Proposed Action). The detrimental effects of the Reduced Water Volume continue the greater the reduction in permitted diversions.

Section 2.1.1 of the Draft EIS recognizes the rights of DHHL to reserve water from a water lease under HRS § 171-58(g). The DHHL expected reservation amount, as approved by the Hawaiian Homes Commission, is approximately 11.5 mgd, of which approximately 1.0 mgd is identified for DHHL's use in Pulehunui. Please note that the Section 2.1.1 of the Final EIS has been updated to include the results of the Beneficiary Consultation presented to the Hawaiian Homes Commission on May 30, 2019, but the anticipated reservation amount has not changed. See Final EIS pages 2-4 to 2-7. The Final EIS also recognizes that, contrary to what was stated in the Draft EIS, because no water leases have been issued under HRS § 171-58, and the manner in which reservations are to be actualized has yet to be determined, in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL will be necessary to allow any temporary use of water reserved for DHHL.

Comment 9: *The second paragraph on page iii uses the acronym "IIFS" without first introducing the compound term, Interim Instream Flow Standards, however, we note that the compound term with the acronym in parenthesis is in the third paragraph on the same page. The same comment applies for the first use of "CWRM D&O".*

Response 9: In response to this comment, this has been corrected in the Executive Summary of the Final EIS at page vi. The acronym is also provided in the "List of Acronyms Used" that follows the Table of Contents in both the Draft EIS and the Final EIS.

Comment 10: *Chapter 2 states that "it is anticipated that EMI and/or Mahi Pono will continue to pursue watershed management activities." Please note that whoever is the applicant for the Water Lease will ultimately be held responsible for fulfilling the requirements of HRS §171-58 (e).*

Response 10: It is acknowledged that any water lessee will be subject to all applicable requirements under HRS §171-58, which articulates terms for the disposition of a water lease. Section 2.1 of the Draft EIS states:

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The amount of water awarded by the Water Lease is subject to all applicable requirements under HRS § 171-58. HRS § 171-58(c), (d), and (e) articulate terms for the disposition of the Water Lease. HRS § 171-58(e) requires that any new lease of water rights "shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan.

A&B was a founding member of the East Maui Watershed Partnership (EMWP). Under the Proposed Action, it is anticipated that the Water Lease lessee will continue to pursue watershed management activities either through an existing watershed management plan or a newly developed watershed management plan or some combination of both. The existing East Maui Watershed Partnership Management Plan was prepared in July 2009 and amended in July 2018. A copy of the EMWP Management Plan has been added to the EIS as Appendix O. The EMWP Management Plan describes the watershed resources such as water, cultural / physical resources, native flora and fauna, and recreational resources. The EMWP Management Plan identifies the watershed threats and management objectives for the East Maui watershed. Under the Proposed Action, if the Applicant is awarded the Water Lease, it is anticipated that EMI and/or Mahi Pono will continue to pursue watershed management activities.

Section 2.1 of the Draft EIS described the State's action with respect to the minimum content requirements of a watershed management plan as of that point in time. However, this section of the Final EIS has been revised to take into account the BLNR's actions on October 11, 2019 under agenda item D-2, where BLNR approved the minimum content requirements for a watershed management plan. A copy of the BLNR-approved DLNR report has been added to the EIS as Appendix O-1. Section 2.1 of the Final EIS, pages 2-2 to 2-4, has been updated to reflect this more recent information regarding the State's requirements for watershed management plans.

Comment 11: *Throughout the document, it has been mentioned that community members and the like have concerns regarding the upkeep of the EMI system. Within the proposed action section (Chapter 2), the DEIS should provide some type of description regarding the existing condition of the system and any maintenance and repairs proposed should the Water Lease be granted.*

We further note, at the October 11, 2019 Board of Land and Natural Resources (Board) meeting, a representative from Mahi Pono stated that Mahi Pono has plans to invest 20 million dollars over the next three years in more efficient irrigation systems. Will part of this investment be in the existing EMI system? If so, please discuss and if not, then what actions are being taken by EMI to ensure that the system being efficiently operated?

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Response 11: EMI continually maintains the EMI Aqueduct System, which is a highly efficient system. A 2012 United States Geological Survey (USGS) study, entitled “*Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawai’i*”, that was prepared in cooperation with the CWRM and cited in the 2018 CWRM D&O, concluded that it was unclear whether net seepage losses even occur in the EMI Aqueduct system, due to the large amount of tunnel in the system, as well as the seepage gains that enter the system. Thus, the system does not lose water. With regards to the Proposed Action, maintenance and repair activities involve keeping the waterways clear of trees, weeds, rocks, dirt and anything that will potentially impede the flow of water. This includes not only in ditches, but in tunnels and flumes as well. EMI evaluates areas of the EMI Aqueduct System regularly to identify where maintenance / repair activities are necessary and adds them to a list of maintenance projects. In response to questions raised through public comments, the following text has been added to the Final EIS at Section 2.1.2 page 2-7.

Moreover, while EMI continually maintains the EMI Aqueduct System, there are times when it focuses its efforts in critical areas that are utilized more frequently. However, this in no way implies that EMI leaves any portion of the system in disrepair.

As noted above, the EMI Aqueduct System is highly efficient. The investment planned by Mahi Pono is to improve the efficiencies of its Central Maui Field Irrigation System as noted in Section 2.1.4 of the Final EIS, which explains:

. . . Mahi Pono expects to invest over \$20 million to increase the efficiency of its private Central Maui Field Irrigation System (i.e. the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high efficiency irrigation systems. These new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health, thereby making a more sustainable use of the water resources.

Comment 12: *On page 2-10 we note that the three surface sources relied upon for Upcountry Maui via Wailoa Ditch, processed by Kamole-Weir treatment plant, totals 17.9 mgd, yet only 9.1 mgd is reliable "due to limitations and maintenance requirements." Please elaborate on this finding and what, if any, plans will address the reliability and maintenance issues.*

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Response 12: To clarify, only one of the three surface water sources relied upon for the MDWS Upcountry Maui Water System is sourced by the EMI Aqueduct System and processed by the Kamole-Weir WTP. Section 2.1.3.1 of the Draft EIS states:

One of the three surface water sources is delivered directly by the EMI Aqueduct System, through the Wailoa Ditch. Average daily use by the MDWS from the Wailoa Ditch is about 7.1 mgd, which includes water processed by the Kamole-Weir Water Treatment Plant (WTP) (discussed in further detail below) and non-potable water for the KAP, which receives water from Reservoir 40.

However, as discussed in Response #7 above, some text in Section 2.1.3.1 has been updated with corrected information from MDWS. The other two surface water sources are fed from streams situated on privately-owned land, rather than the Wailoa Ditch, and the County's ability to access these stream waters are part of the same agreement that allows the County to take water from the Wailoa Ditch. The continuation of this agreement is predicated on EMI's securing water permits or a Water Lease from the State for the East Maui stream waters.

Regarding the statement in Section 2.1.3.1 of the EIS that you commented on, regarding MDWS's access to 17.9 mgd and only 9.1 mgd being reliable, that information came from the CWRM D&O, FOF 810 and 811, which was taken from statements made by the MDWS Director at that time, and provides as follows:

The combined surface and ground water sources have a production capacity of 17.9 mgd: 13.0 mgd from surface water, . . . and 4.9 mgd from ground water (including 1.5 mgd in emergencies from the Hamakuapoko wells). (FOF 810).

However, due to occasional maintenance requirements and limitations on the use of the Hamakuapoko Wells, reliable capacity stands at 9.1 mgd. This is premised on the following sources not being available: 1) the largest surface-water facility, the Kamole-Weir at 6.0 mgd production capacity; 2) the Pookela Well at 1.3 mgd production capacity; and 3) Hamakuapoko Wells at 1.5 mgd, which is only available at times of emergency. These three sources total 8.8 mgd, potentially reducing total production capacity of 17.9 mgd to 9.1 mgd. (FOF 811).

We are not aware of the rationale behind this finding on reliable capacity, which comes from the MDWS, nor of any improvements being currently planned by the MDWS to the Kamole-Weir WTP.

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Comment 13: *In section 2.1.3.1, we note that currently DWS is being charged 6 cents per 1,000 gallons to receive East Maui surface water for KAP and other Upcountry Maui farm areas. Notably, DWS purchases water for domestic use from EMI's West Makapipi Tunnel 2, Well No. 4806-07, known as the Nāhiku Tunnel. What is the approximate annual amount charged to DWS and does the amount charged take into consideration the two aqueducts above the license area in Haiku Uka owned by DWS?*

Response 13: You are correct that the EIS purports that MDWS is charged 6¢ per 1,000 gallons to receive East Maui surface water. That text at Section 2.1.3.1 has been further clarified in the Final EIS as follows:

The MDWS has been able to receive its surface waters from all three Upcountry Maui water sources through a series of agreements with EMI. Because the EMI agreements with the MDWS provide that water supplied to the MDWS is contingent upon the Water Lease (or revocable permits) being issued, for purposes of this EIS, no water is presumed to be provided to the MDWS if the Water Lease is not issued. Currently the MDWS is being charged 6¢ per 1,000 gallons to receive East Maui surface water for the KAP, at Kamole-Weir, Nāhiku, and for the Waikamoi waters that feed the Upper and Lower Kula water systems and other Upcountry Maui farm areas.

Section 2.1.3.3 of the Draft EIS also states that MDWS purchases water delivery for domestic use from EMI's West Makapipi Tunnel 2 (Well No. 4806-07), aka the "Nāhiku Tunnel." However, please note that Section 2.1.3.3 of the Final EIS has been updated with correcting information regarding the MDWS Nāhiku Service Area as shown on pages 2-21 to 2-22.

In response to your comment about the approximate annual amount charged to MDWS, the following has been added to Section 2.1.3 of the Final EIS:

With the issuance of the Water Lease in the Proposed Action, the amount of water the MDWS would receive through the EMI Aqueduct System through the Wailoa Ditch is assumed to be consistent with prior use, identified in the CWRM D&O as an average of 7.1 mgd. Per the 1973 Memorandum of Understanding, 6 cents per thousand gallons has been the rate at which EMI charges the County of Maui for accessing raw, untreated water. This includes water for the Nāhiku community as well as the water drawn from the Wailoa Ditch at Kamole-Weir and both of the Ha'ikū Uka systems (which are not sourced by the EMI Aqueduct System). The total annual amount collected by EMI from deliveries sources ranges between approximately \$70,000 and \$150,000, depending on the demand for the year (Munekiyo, Updated 2020).

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Comment 14: *Within Section 2.1.4 Central Maui Field System, there is no discussion on the current activities of Mahi Pono within the Central Maui Area. Please revise section accordingly given the fact that at the October 11, 2019 Board Meeting, a representative from Mahi Pono stated that they currently have 70 acres in production for potatoes.*

We wish to note that this statement was confirmed via an article published in the Star Advertiser on September 1, 2019 which also indicated that these potatoes are being grown as a "signature" crop similar to that of the Maui pineapple and the Maui onion. This appears to be contradictory to one of their core principals, which is "growing food for local consumption." Further, several times during the Board meeting, the representative stated that the food grown would be for the Hawaii market. Based on the article, it seems to infer that the "Hawaii market" may not necessarily be the local Hawaii market. Mahi Pono should make clear their intentions regarding the business aspect of their Farm Plan.

Response 14: As provided in Response #4 above, Section 2.1.4 of the Final EIS, pages 2-30 includes updated information about Mahi Pono's farming activities and water use projections as of October 2020.

As of November 2020, Mahi Pono's agricultural uses in Central Maui irrigated by the East Maui stream waters included:

- a. 1,398 acres in orchard.
- b. 633 acres in row crops
- c. 32 acres in energy/cover crops
- d. 23 acres in tropical fruits
- e. 12,000 acres in pasture for cattle

Regarding your comment about potatoes being grown as a signature crop and what is meant by food for local consumption, Mahi Pono's initial potato crop was largely donated to various charities and food bank programs in Hawai'i. No potatoes were sold to locations outside of the State of Hawai'i. These actions are in-line with the statements made by Mahi Pono representatives at the BLNR meeting of October 11, 2019.

Regarding your comment about whether the food to be grown by Mahi Pono under the farm plan will be for the local market, "food for local consumption" means crops grown for Hawai'i residents and visitors. Section 4.7.4 of the of the Draft EIS states that at full operations, "... total farm sales would be about \$160.7 million per year, of which an estimated \$104.4 million (65%) would be Hawai'i sales and \$56.2 million export sales (35%)." Hence, it is anticipated that

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approximately 65% of the farm sales would be local sales. However, the local market is too small to utilize all of the crops planned to be grown, and thus some export is necessary.

Comment 15: *Regarding ALISH classifications for East Maui, the discussion surrounding this section seems to be incomplete. Based on the map provided as Figure 4-10, it appears that no ALISH lands are located within the license area, however, it is unclear if some of the beneficiaries of the Water Lease are located outside of the license area, but within an ALISH designated area. If this is so, then this should be discussed accordingly.*

Response 15: There are no ALISH lands located within the License Area. The following statement has been added to the East Maui subsection of Section 4.1.2 on page 4-20 of the Final EIS, "However, there are no ALISH classified lands within the License Area itself."

Figure 4-10 depicts the East Maui License Area and clearly shows there are no ALISH designations for that land. It is stated repeatedly in the EIS that under the Proposed Action most of the water derived from the Water Lease will be used for agricultural purposes in Central Maui - Mahi Pono has not proposed any farming within the License Area. With respect to ALISH ratings in Central Maui, please see Fig. 4-16, which shows that the majority of the Central Maui lands are designated ALISH Prime. The Agricultural and Related Economic Impacts assessment (Appendix I) also provides a discussion of ALISH ratings for Upcountry Maui and Central Maui. Please note that a detailed description of NRCS, ALISH, and LSB classifications has been added to Section 4.7.4 of the Final EIS at pages 4-295 to 4-297, in the subsection addressing Central Maui - Agricultural Conditions.

Comment 16: *On pages 4-56 of the 2018 CWRM D&O, under the section Setting the IIFS, it is noted that "[t]his scenario represents the flow conditions as described in the CWRM D&O setting the IIFS which included 24 streams and mandated restoration of flows in all but three streams." According to the information in section 1.3.4, the CWRM D&O required that 10 streams have no diversions, 5 streams were required to return to 64% of the median base flow, and 7 streams were required to have 20% of the median base flow. This totals 22 streams. Yet 24 streams were a part of the contested case. Please explain the discrepancies amongst the referenced "three streams", on pages 4-56, 22 streams, in section 1.34, and 24 streams that were part of the contested case.*

Response 16: The reference you made to page 4-56 is to the Draft EIS (Section 4.2.1) and not the CWRM D&O. The heading of that particular Draft EIS subsection is "2018 CWRM D&O - Setting the IIFS." You also pointed to Draft EIS Section 1.3.4 (titled "Interim Instream Flow Standard Decision and Order"). After reviewing those sections you asked for clarification on

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number of streams subject to the CWRM D&O and the applicable restoration status ordered by CWRM under the CWRM D&O.

The CWRM D&O is confusing relative to the nomenclature and number of streams. We nonetheless have tried to reference the D&O as accurately as possible.

In FOF 56 of the CWRM D&O, the CWRM states that:

56. *There are 24, not 27, streams that are the subject of this contested case.*
 - a. *Waikani is not a stream....*
 - b. *Alo is a tributary.....*
 - c. *Pua'aka'a is a tributary*
 - d. *Pi'ina'au and Palauhulu are separate streams but join together before reaching the ocean....*

The above is also referenced as Footnote #7 in Section 1.3.4 of the Draft EIS.

However, in Item h of the CWRM D&O (pp. 268-269), the CWRM lists Pi'ina'au and Palauhulu separately, thus bringing the total number of 'streams' listed in that table (which provides the restoration status ordered by CWRM) to 25. As noted in that table there are three streams whose restoration status is "None". That is the source of our use of "three streams."

As mentioned in Response # 5, NHLC filed petitions seeking IIFS for 27 streams. During the extensive proceedings on those petitions, CWRM determined that only 24 of the 27 qualified as streams. See CWRM D&O FOF 56, quoted above. In issuing the CWRM D&O, CWRM set new IIFS for 22 streams and tributaries.

As described in Section 1.3.4 of the Draft EIS, in setting the new IIFS for the petitioned-streams, CWRM ordered four different types of restoration status: Full, Connectivity, H₉₀, and None. Ten streams (one of which was recognized as a tributary) were ordered to be fully restored (1. Makapipi; 2. Waiohue; 3. West Wailuāiki; 4. Wailuānui; 5. Waiokamilo; 6. Palauhulu; 7. Pi'ina'au; 8. Hanehoi; 9. Huelo (Puolua) tributary; and 10. Honopou). In other words, these streams can no longer be diverted by the EMI Aqueduct System.

Seven streams (one of which is recognized as a tributary) were ordered for connectivity flow restoration, meaning 20% BFQ50 (1. Hanawī; 2. Kapā'ula; 3 Pa'akea; 4. Pua'aka'a; 5. Nua'ailua; 6. Ha'ipua'ena; and 7. Puohokamoia).

Five streams were ordered for H₉₀ flow restoration, meaning required to return 64% of BFQ50 (1. Kopili'ula; 2. East Wailuāiki; 3. Honomanu; 4. Punalau/Kōlea; and 5. Waikamoi).

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No restoration status was ordered for three streams (1. Waia‘aka; 2. ‘Ōhi‘a/Waianu; and 3. Wahinepe‘e). The CWRM D&O did not set new IIFS for the 12 non-petitioned streams within the License Area that are diverted by the EMI Aqueduct System.

For clarity, Table 1-2 (License Area Streams as presented in Table 1-2 in the EISPN (February, 2017) Reconciled with Stream Names Used in the CWRM D&O (June 20, 2018)), has been amended to note the streams and tributaries as noted above.

Comment 17: *Please elaborate on why the Mahi Pono Farm Plan will not require drainage improvements especially given the need for building construction and the increase in impervious surfaces.*

Response 17: As stated in Section 4.2.4 of the Draft EIS, the Central Maui agricultural fields and infrastructure are designed and operated to efficiently utilize irrigation water received through the EMI Aqueduct System so that there is no surface runoff. Therefore, no significant changes to existing drainage patterns or systems within Central Maui are anticipated. The Final EIS includes a clarifying statement in Section 4.2.4 at page 4-87 as follows:

The Proposed Action is limited to the issuance of the Water Lease for the subject License Area, which would enable the lessee to continue operation of the EMI Aqueduct System that has been in operation for over a century. The Proposed Action continues the use of the EMI Aqueduct System ~~system~~ for the transport of surface water, which will allow for the transition of the agricultural fields in Central Maui to a diversified agriculture operation. In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of the DHHL. No significant changes to existing drainage patterns or systems within Central Maui are anticipated. Any drainage concerns related to construction associated with the Mahi Pono farm plan (i.e., agriculturally related buildings, solar farm(s)) will be addressed through the applicable permitting processes. Irrigation water would be applied at rates that will not cause surface runoff. Severe rainfall can result in localized runoff or ponding but would be unrelated to the amount of irrigation water made available through the EMI Aqueduct System.

Comment 18: *Regarding the Impact and Mitigation section regarding Climate Change for Central Maui, it is unclear how Mahi Pono plans to counteract its carbon footprint. The DEIS give the reader the impression that agricultural operations may act as a carbon sink. While research shows that agriculture has such potential, it is dependent on the farmer's practices and usage of a carbon farm plan, similar to that of the Marin Carbon Project, as the basis for its*

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operations. This does not seem to be the case for Mahi Pono. Further it appears that the DEIS relies heavily on the fact that the amount of carbon produced by its proposed operations will be substantially less than what was released during sugarcane operations. The analysis should be based on current conditions and not on the historic condition of sugar, which not been in production since the beginning of 2016. Further, the analysis does not take into account any exportation of crops. Unless we are to assume that all crops produced will stay on Maui, some type of export will be required, even if that only includes interisland.

Response 18: Mahi Pono’s goals for its diversified farm plan in Central Maui will be guided by its core principles of using reasonable and environmentally responsible “best management practices” (BMP), planting non-GMO crops, and growing food for local consumption.

Section 4.3.1 of the Draft EIS contemplates climate change and how Mahi Pono’s farm plan may contribute to climate change drivers. As stated in Section 4.3.1 of the Draft EIS:

As Mahi Pono’s farm plan becomes operational, GHG emissions from internal combustion engines in farming equipment, and transportation related to crop production and workers will increase over the current fallow conditions. When fully operational, the amount of GHG emissions compared to former sugarcane operations does not suggest that one would be significantly greater than the other. There will be seasonal differences in emissions with a sugar monocrop generating more emissions during seasonal harvests while diversified agriculture would likely be distributed due to differences in crop cycles. Sugar also involved burning but such emissions were not from fossil fuels. Sugar also involved transporting products overseas for processing and distribution while diversified agriculture could reduce the amount of food crops imported from overseas as it increases the amount of local food production. Mahi Pono’s farm plan proposes livestock operations on the agricultural fields in Central Maui. The livestock sector requires a significant amount of natural resources and has a role in GHG emissions, especially methane and nitrous oxide...

These GHG emissions will be offset to some degree due to the reduction of Hawai’i’s reliance on imported food due to the statewide availability of Mahi Pono’s locally grown crops. At full build-out, Mahi Pono’s farm is expected to produce in excess of 200 million pounds of fresh produce for Hawai’i that would otherwise be imported, thus significantly reducing the GHG impact of shipping these products from the mainland US. It is acknowledged that the steady increase in farming activities over time as the Mahi Pono farm plan gets fully implemented will involve some addition of carbon output related to a greater use of farming equipment than present conditions.

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The exact nature of how the climate will change and impacts from any changes is unknown. As research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

As noted in Response #14, Appendix I and Section 4.7.4 of the Draft EIS does contemplate that some of the crops produced by Mahi Pono will be sent off island. Similar information has been added to the Central Maui subsection of Section 4.3.1 of the Final EIS at page 4-93 as follows:

As Mahi Pono's farm plan becomes operational, GHG emissions from internal combustion engines in farming equipment, and transportation related to crop production and workers will increase over the current fallow conditions. When fully operational, the amount of GHG emissions compared to former sugarcane operations does not suggest that one would be significantly greater than the other. There will be seasonal differences in emissions with a sugar monocrop generating more emissions during seasonal harvests while diversified agriculture would likely be distributed due to differences in crop cycles. Sugar also involved burning but such emissions were not from fossil fuels. Sugar also involved transporting products overseas for processing and distribution while diversified agriculture could reduce the amount of food crops imported from overseas as it increases the amount of local food production. To the extent economically feasible, Mahi Pono and other farmers on its land will grow food crops for the Hawai'i market. Generally, the reduction in imported food would reduce fossil fuel emissions from shipping and airline carriers. However, the Hawai'i market is too small to use all of the available farm product expected to be produced on the Central Maui agricultural lands, and thus some export is necessary. At full development of its farm plan, Mahi Pono expects that its local sales, including those of its farm tenants, will comprise roughly 65% of total sales generated from the Central Maui agricultural fields, with exports being 35%, which is a reduction in the exports and thus a reduction in GHG emissions as compared to a monocrop such as the former sugarcane operations.

Moreover, the Mahi Pono Farm Plan proposes approximately 250 acres of green energy, such as solar farm(s) with a capacity of approximately 37.5 MW of clean energy to be provided to the MECO grid and/or for Mahi Pono's farm operations, which would further reduce GHG emissions. In addition, as noted in the Draft EIS, Mahi Pono will use power from two existing hydro-electric facilities to power the many drip irrigation systems, groundwater well pumps, and facility/tenant buildings through a private 62-mile transmission grid throughout the Central Maui agricultural fields.

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Comment 19: *It is unclear why the discussion on sea level rise only took into account passive flooding as the State's Hawaii Sea Level Rise Vulnerability and Adaptation Report recommends using the sea level rise exposure area (SLR-XA) as the baseline for discussion.*

Response 19: The Draft EIS utilized the State of Hawai'i's most current sea-level rise exposure maps. These maps were produced as part of the Hawai'i Sea Level Rise Vulnerability and Adaptation Report, which was stewarded by the Office of Conservation and Coastal Lands at the Department of Land and Natural Resources. The Hawai'i Sea Level Rise Vulnerability and Adaptation Report and its subsequent mapping products are currently the State's standard for assessing potential impacts along Hawai'i's shoreline. Each length of coastline was reviewed by the State's experts to select key natural phenomenon for assessment. Regarding the coastline below the License Area, the State only selected passive flooding for assessment, thus the only impacts identified, mapped, and presented in the report by the State of Hawai'i for East Maui are those associated with passive flooding. For preparation of the Draft EIS, we followed the State's guidance and utilized their preferred mapping products for assessment of sea-level rise impacts.

Comment 20: *Regarding the discussion for Central Maui under the hurricane and wind hazards section, it is stated that "the proposed action does not include any construction in Upcountry Maui that would be at risk in the event of hurricanes and wind hazards." Does this imply that the KAP expansion has no associated structures?*

Response 20: The Applicant has no involvement in the development of the KAP expansion area. The County of Maui is solely responsible for the use of that land as well as complying with any and all regulatory requirements. It is assumed that the County will ensure that construction, if any, that may take place within the KAP expansion area will be in compliance with Maui County Code requirements.

Comment 21: *Seismic hazards for Central Maui should address construction related to the Mahi Pono Farm Plan.*

Response 21: With respect to hurricanes and wind hazards, Section 4.3.4 of the Draft EIS provides the following with respect to Central Maui:

In Central Maui the Proposed Action largely entails diversified agriculture, which will not present a risk in the event of hurricanes or wind hazards. Construction related to the Mahi Pono farm plan (e.g. solar farm, agricultural processing facilities) is limited, and will be built to all appropriate standards to address risks related to hurricanes and wind hazards.

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With respect to seismic hazards, Section 4.3.5 of the EIS (Seismic Hazard), has been revised to include a similar statement as found in Section 4.3.4 of the Draft EIS as follows:

The Proposed Action is limited to the issuance of the Water Lease for the subject License Area, which would enable the lessee to continue operation of the EMI Aqueduct System that has been in operation for over a century. The Proposed Action continues the use of the EMI Aqueduct System system for the transport of surface water, which will allow for the transition of the agricultural fields in Central Maui to a diversified agriculture operation, and the continued conveyance of water to the MDWS. In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of the DHHL. For Upcountry Maui, the Proposed Action does not entail any new construction, and therefore maintains status quo with respect to seismic hazards. ~~In Central Maui, the 30,000 acres of fields will be used for farming, as it has been for over a century, and the Proposed Action is not anticipated to present any new risks with respect to seismic hazards.~~ In Central Maui the Proposed Action largely entails diversified agriculture, which will not present a risk in the event of seismic hazards. Construction related to the Mahi Pono farm plan (e.g. solar farms, agricultural processing facilities) is limited, and will be built to all appropriate standards to address risks related to seismic hazards.

Comment 22: *For the mitigation associated with the maintenance of the East Maui system, who is responsible for ensuring that the qualified biological monitor or inspector meets all the specifications as represented in the avoidance and minimization measures proposed as mitigation for impacts to flora? How will runoff from the washing areas be disposed of/mitigated/controlled?*

Response 22: The mitigation measures referenced in Comment #22 are discussed in the East Maui subsection of Section 4.4.1 of the Draft EIS. EMI owns and operates the EMI Aqueduct System and is responsible for the maintenance of the EMI Aqueduct System. It is assumed that the proposed Water Lease would require compliance with appropriate mitigation measures identified in the EIS, but the terms of the Water Lease are at the discretion of the BLNR and would have to be agreed to by the lessee.

It is not anticipated that there will be significant use of any washing areas related to the maintenance of the EMI Aqueduct System. The recommend mitigation measure applies only for maintenance activities that take place on cliff sides, near waterfalls, and in other native species–dominated areas in the License Area. Appendix C (Terrestrial Flora and Fauna Technical Report)

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explains, as recited in the Draft EIS in Section 4.4.1, the limited scenario where such mitigation measures are recommended:

However, to the extent that maintenance activities are undertaken within the License Area in pristine areas, such as on cliffsides, nears waterfalls, or in other native species dominated areas, the following avoidance and minimization measures are recommended: . . .

To avoid the unintentional introduction or transport of new invasive plant species into more pristine portions of the License Area during aqueduct maintenance activities, all equipment and vehicles arriving from outside the License Area should be washed and inspected prior to any maintenance activities on cliffsides, near waterfalls, and in other native species–dominated areas in the License Area. Such washing and inspecting should be done at a designated location.

Based upon decades of operation of the EMI Aqueduct System, it is highly unlikely that maintenance activities will take place in such areas, as the maintenance activities are related to the maintenance and repair of existing access roads and trails that are currently used in connection with the EMI Aqueduct System, and maintenance on the EMI Aqueduct System itself. As such, maintenance activities would be within areas that are already in use. Nevertheless, the Terrestrial Flora and Fauna Technical Report recommends that "*Inspection and cleaning activities should be conducted at a designated location.*" Inspection and cleaning activities will occur prior to entering the License Area. Moreover, any construction materials to be used for repair and maintenance activities will be inspected and washed prior to entering the License Area. Washout locations will not drain into parks, open areas, or pristine environments. Washout procedures will follow applicable BMPs.

To date, EMI has worked closely with the Maui Invasive Species Committee (MISC) to assist in mitigating non-native weeds along the EMI Aqueduct System and access roads. In response to your comment, the East Maui subsection of Section 4.4.1 of the Final EIS at page 4-123 has been revised to reflect EMI's work with MISC as follows:

EMI has worked closely with the Maui Invasive Species Committee (MISC) to assist in mitigating non-native weeds along with the EMI Aqueduct System and access roads. Typical procedures involve EMI staff notifying MISC of sightings and locations of non-native weeds, and then facilitating access by MISC to these identified areas to conduct appropriate treatment methods. EMI has committed to continuing to work with MISC in order to institute more stringent protocols for equipment sanitization and protection of the License Area.

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Moreover, pursuant to HRS § 171-58(e) a watershed management plan is required in connection with a water lease as discussed in Response #10 above.

Comment 23: *For impacts and mitigation for flora in Central Maui, a discussion regarding any clearing, grading, or grubbing activities associated with the Mahi Pono Farm Plan should be included.*

Response 23: Section 4.4.1 of the Draft EIS explains that the Central Maui agricultural fields have been in agricultural production for over 100 years. The Terrestrial Flora and Fauna Technical Report prepared by SWCA determined that no special status plant species exist within the Central Maui fields. As such, continuation of agricultural use of the Central Maui fields, as proposed under the Mahi Pono farm plan, cannot have impacts to flora, except to remove existing non-native flora. Section 4.4.1 of the Draft EIS explains that the diversified agriculture proposed by Mahi Pono could actually have a beneficial effect as, *"Increasing the diversity of crops, as is proposed with the Mahi Pono farm plan, increases the niches in which flora can establish and would therefore be beneficial to some flora because the agricultural lands would provide an increased diversity of foraging, breeding, and nesting resources. In general, increased diversity in croplands could lead to an increased diversity of flora."*

For clarity, the following statement has been added to the Central Maui subsection of Section 4.4.1 of the Final EIS at page 4-125: *"Agricultural activities, including but not limited to clearing, grading, and grubbing, related to the implementation of the Mahi Pono farm plan will not have an adverse impact on the existing flora in the Central Maui agricultural fields."*

Comment 24: *For impacts and mitigation of fauna in East Maui, mitigation measures should pertain to only maintenance activities as no land uses or construction is being proposed. Specifically, the DEIS notes that the use of barbless top-strand wire is recommended for all fence construction to avoid entanglement of the Hawaiian hoary bat. No fence construction was discussed as a part of the proposed action; therefore, this mitigation measure does not appear to apply. Further, tree removal would not be considered a maintenance activity unless it poses a risk to public health, safety, and welfare. In addition, please note that as the EMI system is located within the State Land Use Conservation District EMI is encouraged to speak with the Staff of the Office of Conservation and Coastal Lands to ensure proper permits and or approvals are received prior to conducting any work in the Conservation District. In addition, you state that the Modified Lease Area alternative may have a significant effect on flora, fauna, and invertebrate species due to an increase in public access. Please include a discussion on how EMI currently maintains public access.*

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Response 24: It is acknowledged that mitigation measures should pertain only to repair and maintenance activities as no land uses or construction are being proposed within the License Area. These above-mentioned mitigation measures have been removed from the discussion in the East Maui subsection of Section 4.4.2 (Fauna and Invertebrates) of the EIS and the following footnotes at page 4-130 of the Final EIS added to explain the deletion:

Mitigation measures eliminated from the recommendations in this FEIS as not applicable to the License Area in East Maui because the Proposed Action does not include the removal of trees and there will not be any fence construction, as noted by the DLNR in its DEIS comment letter.

Mitigation was included here in error. It has been deleted here and retained in the Invertebrates subsection.

All repair and maintenance activities will, as they have been in the past, be in compliance with Title 13, Chapter 5, HAR, and Chapter 183C, HRS, which pertain to the Conservation District.

Currently, access within the License Area is regulated by EMI in collaboration with DLNR. EMI maintains locked gates on the main access roads that lead into the watershed. Section 4.8 of the Draft EIS described access, and minor clarifications to that description were made in the Final EIS as follows:

To hunt within the License Area, hunters must obtain a license from the DLNR and an EMI Permit / Waiver. Hunting grounds are limited to one hunting party per hunting area, as regulated by the DLNR. Hunters enter the hunting unit every Saturday and Sunday, as well as holidays observed by EMI. Prior to entering, hunting parties must sign in with the license number obtained from the DLNR, and upon exiting must log in any game that are taken. Access to the hunting grounds is managed by EMI through eight existing EMI access roads. Hunting is permitted year round. Hunting parties may enter the License Area by vehicular access, however, must traverse by foot in most areas.

Hiking is also a permitted recreational use within the License Area, ~~and is limited to hiking clubs~~. Access to the License Area for hiking is acquired through a Hiking Waiver from EMI. ~~Generally Only~~ two hiking clubs currently enter the License Area lands approximately four to six times a year; the Sierra Club Maui Group and Mauna Ala Hiking Club. They enter on foot, and are guided by a club hiking expert with a manageable number of people. However, individual hikers are also permitted to enter the License Area and are subject to the same requirements as the hiking clubs.

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Other recreational uses are not permitted on the License Area for safety reasons, but trespassing and unpermitted access for hiking, gathering, and illegal hunting does occur on these State lands. It should be noted that in the past people have used the EMI Aqueduct System as a recreational resource and unfortunately have died as a result. The EMI Aqueduct System is not a recreational resource. As discussed in response to DEIS comments, EMI has taken many steps to promote ditch safety on Maui, including conducting a safety audit of the EMI Aqueduct System using local and national experts which resulted in a program of ditch improvements (e.g., fencing, physical barriers, signage) in an effort to help prevent future incidents. Safety grates have been installed on all siphons. EMI also intensified its existing school presentation programs, giving in person slide presentations about the EMI Aqueduct System and the dangers of playing in it. EMI initiated a program of print and radio safety ads, focused around school vacation periods. EMI also created the EMI Safety Program, partnering with eight youth clubs across Maui to conduct an annual “Play Hard, Play Safe” campaign, that includes an EMI Safety Selfie contest, that serves to increase Maui youth’s awareness of the dangers of playing in the ditches. Notwithstanding these efforts, trespassing cannot be completely controlled.

However, please note that should the License Area be modified, public access procedures may change as discussed in Section 3.2.2.2. of the EIS. In particular, if the License Area is decreased, the management of those lands not within the License Area would be under the control of the State. For example, in the renewal of the 2020 Revocable Permits, BLNR removed the approximately 7,500-acre Hanawā Natural Area Reserve (NAR) from the Revocable Permit area. This area was within a portion of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. There is little expectation that the eventual License Area will include the NAR. Public access to the NAR area is restricted by the DLNR. Please note that Section 3.2.2.2 of the Final EIS, pages 3-21 to 3-24 has been updated to include a more robust discussion regarding impacts to the areas that would allow for more public access as shown below, and Table 3-2 within Section 3.5 of the Final EIS at pages 3-49 to 3-80 providing a comparative evaluation of the alternatives also provides a summary of such impacts.

Comment 25: *In the Historic Resources section, the DEIS states that the Modified Lease Area alternative may have the potential to impact historic properties if there is an increase in unmanaged public access to the license area. Please include a discussion regarding the specific historical sites you believe will be impacted by this alternative.*

Response 25: Cultural Surveys Hawai‘i (CSH), the consultant that prepared the Archaeological Literature Review and Field Inspection (LRFI) report included in EIS Appendix E and

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summarized in Section 4.5 of the EIS, has not identified specific historic sites that could be impacted. The report included an analysis of the natural and built environment of the License Area, a comprehensive review of traditional and historic background information of the region, a review of previous archaeological studies and findings in the region, and a field inspection of the License Area focused on inspecting the areas nearest to the EMI Aqueduct System infrastructure and access roads. No specific historic resources were located. However, sites are *presumed* to exist in the area due to the history of the area. As such, mitigation measures are proposed in the event of increased public access to the License Area. As discussed within the LRFI and Section 4.5 of the Draft EIS with respect to East Maui:

Previous archaeological research included a summary of approximately 45 archaeological studies conducted in the vicinity of the current License Area including early island-wide surveys, studies specific to the Hāna Highway, and studies conducted in the vicinity of each license area. In general, these studies document the rich archaeological landscape along the coast of the region and extending upward into many of the stream valleys. Findings include agricultural complexes, habitation areas, heiau, trails, walls, historic structures and remnants, WWII-era structures, and other associated artifacts and deposits. Few of these previous studies are within or overlap with the CSH's LRFI.

In response to comments received, the East Maui subsection of Section 4.5 of the Final EIS has been expanded to include CSH's work conducted in conjunction with the preparation of the LRFI and its findings, including updated work undertaken in response to comments received on the Draft EIS. However, no sites were identified as shown on pages 4-137 to 4-139.

proposed Water Lease, which merely continues the long-term use of the EMI Aqueduct System for the diversion of East Maui stream water, will not include partial or total destruction or alteration of any archaeological historic properties. The proposed Water Lease does not include project-related ground disturbance or changes in water flow greater than periodic natural stream freshets. As such, the Proposed Action will have no impact to archaeological historic properties. Nevertheless, while the Water Lease will not impact historic or archeological resources (because the patterns of use and operation will be the same as it has been over the last century), in an abundance of caution, CSH recommended that any persons who are required to enter the License Area in connection with the Water Lease be made aware of the potential for discovery of undocumented surface historic properties such as walls, trails, terraces, mounds, and/or caves. Any such items should be avoided, protected, and reported to the SHPD. The SHPD will determine if additional mitigation is required.

The potential of impacts from unmanaged access into the License Area is identified in the LRFI. Moreover, in response to comments received, the language has been added to Section 3.2.2.2 of Final EIS as shown on pages 3-21 to 3-24.

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Comment 26: *The impacts and mitigation measures section related to fauna in Central Maui appears to overlook that the proposed buildings could have potential impacts to fauna resources as grubbing and grading are normally associated with site preparation. Please revise your discussion accordingly. In addition, there seems to be a missing transition between pages 4-105 and 4-106.*

Response 26: The Central Maui agricultural fields have been farmed for over 100 years and are not currently occupied by significant or endangered species as indicated by the Terrestrial Flora and Fauna Technical Report (Appendix C) prepared by SWCA. Faunal species observed include pigs and feral cats. All invertebrate species observed are commonly found in Central Maui. Construction of farm buildings would not have an impact on faunal species because there are no species of significance in the Central Maui agricultural fields. As discussed in Draft EIS Section 4.4.2 (Fauna and Invertebrates), the existing flora and fauna environment in Central Maui, due to decades of monocrop production in Central Maui, provided a monoculture environment for flora and fauna. Thus, revisions to the Central Maui subsection of Section 4.4.2 are not needed.

The missing transition between pages 4-105 and 4-106 of the Draft EIS is: *"To minimize potential impacts to fauna, the following measures should be implemented:"* This sentence has been added to the Final EIS at page 4-129.

Comment 27: *Regarding Historic and Archaeological Resources, Hawaii's State Historic Preservation Division (SHPD) confirmed to the Department via an email dated September 24, 2019, that their review of the proposed action confirmed "no historic properties [will be] affected". This determination was based on the absence of ground disturbance activities. However, we note that as beneficiaries of the Water Lease, the Mahi Pono Farm Plan and the KAP expansion will necessitate ground disturbance and therefore be subject to SHPD's 6E Historic Preservation Review Process during their permitting processes.*

Response 27: The Central Maui agricultural fields that Mahi Pono owns, and is and will be farming, have been used for intensive agricultural purposes for over 100 years. Agricultural use of land necessarily involves ground disturbance, and that has been going on in the Central Maui agricultural fields for over 100 years. The proposed agricultural use by Mahi Pono in Central Maui will be confined to existing agricultural fields that, prior to the end of sugar production in 2016, were continuously plowed for more than a century. Additional plowing within an established agricultural plow zone will not pose a new or increased impact to historic properties any more so than past agricultural plowing. CSH through its work on the LRFI (Appendix E) determined that no impacts to historic properties are expected from continued agricultural use in those areas. Nevertheless, CSH provided the following recommendation which has been added to Section 4.5 of the Final EIS at page 4-155:

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The Proposed Action is limited to the issuance of the Water Lease for the subject License Area, which would enable the lessee to continue operation of the EMI Aqueduct System that has been in operation for over a century. The Proposed Action continues the use of the EMI Aqueduct System ~~system~~ for the transport of surface water, which will allow for the transition of the agricultural fields in Central Maui to a diversified agriculture operation. In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of the DHHL. No significant impacts on historic and archeological in Central Maui are anticipated as the agricultural fields in Central Maui have been subject to agricultural activities for over a century. Current and future activities will be kept within existing agricultural fields that, prior to the end of sugar production in 2016, were continuously plowed for more than a century. Additional plowing within an established agricultural plow zone will not pose a new or increased impact to historic properties any more so than past agricultural plowing. However, there may be a potential to impact historic properties if ground disturbance occurs outside of the established agricultural fields or significantly deeper than the established agricultural plow zone. Consultation with the SHPD is recommended in the event that agricultural use in Central Maui is proposed for areas outside of established agricultural zones or for projects that would involve ground disturbance beneath the agricultural plow zone.

As noted in Response #2, the Applicant has no involvement with any existing or proposed uses at KAP or the KAP expansion area. That is a matter entirely under the County's jurisdiction, as that is County land. The County of Maui is solely responsible for the use of that land as well as complying with any and all regulatory requirements. Nevertheless, we note that the KAP expansion land was long used for sugar cane production. We are not aware of what permits, if any, the County may be required to obtain in order to utilize the KAP expansion land, but we note that continued agricultural use, meaning continued ground disturbance, has been going on in those lands for many, many years. It is also important to note that the issuance of the Water Lease does not compel the County to take action at the KAP expansion area. Should the Water Lease be issued for the full amount allowed under the CWRM D&O, the County has the option to continue to rely on water from the EMI Aqueduct System.

Comment 28: *In the Cultural Resources and Practices section, it should be clearly noted that the information gathered from community consultations happened prior to the issuance of the CWRM D&O in 2018, and that many of the concerns are being addressed through the IIFS.*

Response 28: This was clearly stated within Section 4.6 of the Draft EIS that address Cultural Resources and Practices. Specifically, Section 4.6 of the Draft EIS stated:

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In addition, CSH asked permission to use declarations made by members of the community and of Nā Moku Aupuni o Ko'olau that were given to the CWRM in late 2014, a couple of years prior to the issuance of the CWRM D&O, which was issued on June 20, 2018. Although the declarations are part of the public domain, CSH nevertheless attempted to contact each individual to obtain approval to include these declarations in the CIA.

However, this statement has been revised in the Final EIS 4-158 for further clarification as follows:

~~In addition, CSH asked permission to use declarations made by members of the community and of Nā Moku Aupuni o Ko'olau that were given to the CWRM in late 2014, a couple of years prior to the issuance of the CWRM D&O, which was issued on June 20, 2018. Due to the low response rate, CSH incorporated numerous declarations that had been made by community members and Nā Moku Aupuni o Ko'olau in 2014, during the extensive CWRM IIFS proceeding, i.e., declarations provided to CWRM before it issued the CWRM D&O in June 2018. Although the declarations are part of the public domain, CSH nevertheless attempted to contact each individual to obtain approval to include these declarations in the CIA. Below is a list of individuals who approved use of their declaration as part of the CIA~~

Moreover, the CIA did include interviews that were conducted after the CWRM D&O. Additionally, following public review of and comment on the Draft EIS, CSH conducted additional consultation that was targeted to those who had provided comments on the Draft EIS and raised specific issues of a cultural impact nature. Section 4.6 of the EIS at pages pages 4-158 to 4-159 take this additional consultation into account. As you noted, the water restoration required under the CWRM D&O has addressed many cultural concerns. Cultural practices and impacts are further refined at pages 4-171 to 4-254 of the Final EIS.

Comment 29: *In the Social Characteristics section for East Maui, under Impacts and Mitigation, it is mentioned that there should be a reconciliation with the Keanae-Wailuanui community. Why is A&B not listed as one of the key players? Also, who is responsible for leading this effort?*

Response 29: A&B is not listed as one of the key players who would be involved in the Core Working Group or in the Ke'anae-Wailuānui community group because A&B no longer owns or farms the Central Maui agricultural lands. Note that EMI is listed together with Mahi Pono as a

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recommended participant in the Core Working Group. See Social Impact Assessment (Appendix G) at Section 6.2.1 which states:

Two areas of mitigative measures are recommended for consideration, should the proposed water lease be granted by the BLNR. These measures are intended to establish an ongoing working relationship between the community, Mahi Pono and EMI, and related public agencies, as well as continue resolution with the East Maui communities.

With respect to the Ke‘anae – Wailuanui community, as explained in the SIA at Section 6.2.2:

. . . to move past historical impacts, there needs to be established a point of departure. Mitigation needs to go beyond the physical restoration of streams. It needs to address the social context and include apology and reconciliation. This needs to be done within a cultural foundation that binds the community together, and key players, including Mahi Pono, public agencies and elected officials. The manner and forum for this process should be defined by cultural leaders integral with the process.

As such, it is assumed that Mahi Pono and EMI would be responsible for leading this community outreach effort. However, the terms and conditions of the Water Lease will be determined by BLNR, including the extent to which mitigation measures that are provided in the EIS are incorporated into terms under the Water Lease.

Comment 30: *In the Social Characteristics section, we note that under the Impacts and Mitigation section for Upcountry Maui and Central Maui, it is recommended that interest groups or stakeholder groups be defined and that a core working group be established to work collaboratively with Mahi Pono should the Water Lease be approved. However, it is unclear who is supposed to spearhead this working group, who is supposed to fund this working group, and how Mahi Pono will be held accountable for not only participating in this working group, but also seriously considering and/or implementing the recommendations of the working group.*

Response 30: An EIS is a disclosure document provided for informational purposes so that decision makers can make informed decisions about proposed actions. An EIS does not, in and of itself, authorize any activities. Consistent with the provisions of HAR § 11-200-17(m), the Draft EIS provides suggested “mitigation measures proposed to avoid, minimize, rectify, or reduce impact, including provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein” with the expectation that such measures would be implemented in the

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event that the Water Lease is approved. However, we defer to BLNR regarding what terms it chooses to impose under the Water Lease and the extent to which mitigation measures that are provided in the EIS are incorporated into terms under the Water Lease.

Comment 31: *It is unclear why the economic and fiscal section, as well as the agricultural economy section of the DEIS, analyzed "typical sugarcane cultivation" versus "recent sugarcane cultivation." While we understand that the sugarcane industry can provide a somewhat relevant baseline, the "typical sugarcane cultivation" has not existed in the last 13 years. At some point this was no longer the norm and it would probably be better to set the baseline at "recent sugarcane cultivation."*

Response 31: In that the Central Maui agricultural fields had been cultivated in sugarcane and irrigated with East Maui stream water for over a hundred years, these conditions provide a relevant historical context as well as an actual measurement of certain types of past impacts that inform the analysis of the Proposed Action. That is because the Mahi Pono farm plan involves the farming of the same fields and the use of the same source of irrigation water (East Maui stream waters), albeit at a significantly lower level than in the past. The Draft EIS included information on both "typical" and "recent" sugarcane operations to provide a thorough portrayal of past conditions. The recent sugarcane operations are not representative of the historical long-term sugarcane operations and do not accurately indicate the typical conditions that existed for the majority of time that HC&S farmed sugarcane on those fields. The 2008 to 2013 time period was used for the "recent" sugarcane operations, a period during which rainfall was below normal, and the amount of water returned to East Maui streams was large enough to adversely affect sugarcane operations, and HC&S struggled to achieve profitable operations. This was not representative of the conditions for most of HC&S' 146-year history of operations. As such, the 1987 to 2006 period of "typical" sugarcane operations was also analyzed and presented as a benchmark, with data from the year 2006 representative of this period. In 2006, rainfall in East Maui was regarded as normal, the restoration of stream flows was not large enough to significantly affect HC&S sugar cane operations, and the plantation was economically healthy. This is explained in Section 4.7.3. of the Draft EIS.

Comment 32: *Regarding the economic and fiscal impacts, the proposed action and the East Maui Impacts should be combined into one section as that is how the DEIS is organized. For Upcountry Maui, the economic and fiscal impacts from the KAP expansion should be included in the discussion. Regarding Central Maui, it should be noted that the economic and fiscal impacts from Mahi Pono's solar farm could be excluded or considered a separate project not reliant on the Water Lease, as the solar farm could conceivably exist without the water license. Also, while the Mahi Pono Farm Plan anticipates that 790 jobs would be created, there is concern regarding*

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how those positions will be filled and by who as Hawaii's unemployment rate as of April 2019 is 2.8%.

Further, at the October 11, 2019 Board Meeting, a representative from Mahi Pono stated that 700 to 1,000 jobs may be created via their Farm Plan. The upper limit number is much larger than the analyzed 790 jobs. You may need to revise the studies accordingly if 1,000 jobs is a plausible employment projection for the project.

Response 32: The Draft EIS is not organized as you stated. The structure of the Draft EIS consistently addresses impacts in three separate geographic areas, East Maui; Upcountry Maui; and Central Maui. The economic and fiscal impacts of the Proposed Action in East Maui are addressed in Section 4.7.3.2 of the Draft EIS. The economic and fiscal impacts of the Proposed Action in Upcountry Maui are addressed in Section 4.7.3.3 of the Draft EIS. The economic and fiscal impacts of the Proposed Action in Central Maui are addressed in Section 4.7.3.4 of the Draft EIS.

This same format is used throughout Chapter 4, of looking at conditions and impacts in three separate geographic areas, East Maui; Upcountry Maui; and Central Maui. The section titled "Upcountry Maui: Agricultural Impacts of the Proposed Action" addresses anticipated impacts related to the KAP and KAP expansion.

The economic impacts associated with the solar farm(s) proposed by Mahi Pono are addressed both in connection with the Proposed Action and also in connection with the No Action (i.e. no Water Lease) alternative. With respect to impacts under the Proposed Action, please see Section 4.7.4.d titled "Central Maui Agricultural Impacts of Proposed Action", which is discussed in two subsections: (i) Proposed Action - Agricultural Impacts During Development Period; and (ii) Proposed Action - Agricultural Impacts During Full Operations. The EIS acknowledges that it is conceivable that solar farm(s) could be developed in the absence of a Water Lease. That scenario is addressed in Chapter 3, which analyzes the alternatives to the Proposed Action. Specifically, that scenario is assessed as part of the No Action (no Water Lease) alternative in the Central Maui subsection of Section 3.4.13. This information is also within the analysis provided in Appendix I (the Agricultural and Related Economic Impacts assessment report).

Regarding your comment about employment, the Draft EIS estimates that at full implementation of the Mahi Pono farm plan, currently estimated to occur around 2030, farm employment is expected to reach about 790 jobs (about 160 more jobs than provided by HC&S sugar operations in 2006). As explained in Section 4.7.4 of the Draft EIS, in the section addressing Central Maui and agricultural impacts during full operations of the Mahi Pono farm plan:

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The increase in employment would be gradual, with most jobs filled by former sugarcane workers, skilled workers from Maui and other islands, recent graduates of agricultural-schools and colleges, and unskilled workers who would receive on-the-job training.

In its first 18 months of existence Mahi Pono had hired over about 200 workers, all of whom were living on Maui when hired. They were attracted by the type of work, wages and benefits. Based on past hiring, nearly all future employees are expected to come from Maui. Also, attracting workers should be easier than in the recent past because of the long-term adverse economic effects of COVID-19 on tourism and Maui's economy. It may take years to rebuild the economy, and the Mahi Pono farm plan will contribute significantly to this rebuilding.

Regarding your comment about the upper limit of jobs as described by a Mahi Pono representative at the BLNR hearing in October 2019, please note that the studies, specifically the Economic and Fiscal Impact Study and the Agricultural and Related Economic Impacts report provided as Appendix H and I, explain that *direct* farm employment at full build out is estimated at 790 jobs. The studies further explain that related *indirect* employment, i.e., the purchase of goods and services by farmers and ranchers and by the families of their employees would generate an estimated 350 jobs. Thus, the total direct plus indirect jobs is 1,140 with an estimated 1,000 such jobs being on Maui. See Appendix H at p. 53; App I at p. 49-50; and see Draft EIS at 4-159. Accordingly, we do not think that any changes to studies are needed.

Comment 33: *Regarding recreational resources in Central Maui, we note that the Maui Raceway park was not included.*

Response 33: It is acknowledged that Maui Raceway Park was not included as a recreational resource in Central Maui. In response to your comment, the following has been added to the Central Maui subsection of Section 4.8 of the Final EIS at page 4-310, which is the section addressing Recreational Uses and Park Facilities:

There are no parks or permitted recreational activities, including hunting, within the agricultural fields in Central Maui. The County's Department of Parks and Recreation operates and maintains several parks and recreational facilities within Central Maui, in the vicinity of the Central Maui agricultural fields, including the following: Kahului Community Center, Kahului Park, Kamali'i Park, and Baldwin Park. Several golf courses are also located in the vicinity of Central Maui, including the King Kamehameha Golf Club, Dunes at Maui Lani Golf Course, and Maui Country Club. As noted in a comment letter to the DEIS, also located in the region is Maui Raceway Park which operates out of a 220-acre facility managed by the County of Maui. There are also several public and private pools that serve

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the communities in the area. Water derived from the EMI Aqueduct System is not used for any recreational facilities in Central Maui.

Comment 34: *We also note that under the Central Maui section, there is no discussion of how visual plains may change due to the solar farm or the proposed buildings.*

Response 34: Visual resources are discussed in Section 3.4.15 and 4.9 of the Draft EIS. The discussion was more formulated around the amount of green open space that would result from the implementation of the Mahi Pono farm plan. There are structures leftover from sugar cultivation operations that will be repurposed for implementation of the Mahi Pono farm plan.

As noted in the Draft EIS, Mahi Pono proposes to construct approximately 319,000 square feet of building space to support its agricultural operations such as washing and packing areas, storage, etc. The processing facilities will be located within a half-mile from the former HC&S sugar mill. The height of these proposed structures will not exceed the height of the HC&S sugar mill. The heights are not anticipated to exceed 30 feet. View planes should not be significantly affected. We further note, as discussed in Section 5.6 of the Draft EIS, the majority of the approximate 30,000-acre Central Maui agricultural fields are situated in Maui County's AG-Agriculture zoning district. Within the AG district, the County limits heights to 30 feet.

Section 4.9 of the Final EIS has been supplemented with this information, as shown on pages 4-312 to 4-313.

Regarding your comment about potential visual impacts from solar farms in Central Maui, there could be glint / glare impacts associated with a solar farm. As standard with solar farm projects, Mahi Pono will need to consult with the Federal Aviation Administration (FAA) which requires technical assessments in the interest of safety for the Kahului Airport. Depending on the proximity and the size of the solar farm, a glint / glare assessment may need to be conducted in conjunction with the technical assessments required by the FAA. This has been added to the Section 4.9 of the Final EIS as shown on 4-312 to 4-313.

Comment 35: *Regarding the traffic section, not enough information has been provided to fully understand the impact of the Mahi Pono Farm Plan at full build out and a traffic impact study was not conducted so we are unsure how the conclusion was made that there will be minimal impacts on traffic on public roadways. This may also apply to the KAP expansion depending on the number of jobs created.*

Response 35: With respect to the Central Maui agricultural fields, the traffic projections discussed in Section 4.13 of the Draft EIS are based upon prior traffic generation from HC&S employees at the HC&S sugar mill as compared to the anticipated number of Mahi Pono farm

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employees at full implementation of the farm plan (year 2030). It is anticipated that traffic from the Mahi Pono farm plan will be of a different nature (much less concentrated) than the HC&S traffic, as explained in Section 4.13 of the Draft EIS. The traffic will be spread out over the 30,000-acre operation in Central Maui and will mostly be contained to the internal roadway network within the agricultural fields.

Regarding the KAP expansion, the Agricultural and Related Economic Impacts assessment (Appendix I), explains that if the Water Lease is issued allowing the full amount as permitted under the CWRM D&O, and if the County of Maui pursued the KAP expansion, the related development work would provide an average of about 7.5 direct-plus-indirect jobs during the assumed 5-year development period. At completion, the KAP expansion area is projected to provide 20 more direct jobs than currently provided at KAP. See Appendix I at Section 13; see also Draft EIS at Section 3.4.13. As such, the KAP expansion, should it go forward, is expected to have a negligible impact on traffic.

Comment 36: *Regarding wastewater, the DEIS does not discuss the impact that the Mahi Pono Farm Plan will have on existing wastewater infrastructure. This should be discussed as they anticipate 790 jobs to be created and there are buildings which will most likely contain restroom facilities. It is also unclear how field workers would access toilet facilities and where. This should also be analyzed for the proposed KAP expansion.*

Response 36: As explained in Draft EIS Section 4.7.4. (Agricultural Economy), in the subsection dealing with Central Maui, under the Proposed Action at full implementation of the Mahi Pono farm plan, farm employment is expected to reach about 790 jobs, or about 160 more jobs than were in place in that location in 2006. As noted in the section of Chapter 4 that addresses wastewater systems, Section 4.15.2 of the Draft EIS, the Proposed Action is not anticipated to result in significant impacts to the existing wastewater infrastructure in the Central Maui agricultural fields and will maintain existing conditions. However, for clarity and in response to your comment, the following revisions have been made to the Central Maui subsection of Section 4.15.2 at page 4-329:

There are no County operated wastewater disposal facilities in the Central Maui ~~region~~ agricultural fields. However, the Pu'unēnē Mill facility has a private system which is connected to the County wastewater system in the region. Individual wastewater disposal needs in the area are currently addressed either by cesspools, septic tanks or individual wastewater treatment systems. Except for HC&D's (HC&D is also known Amerson) facility restrooms, none ~~None~~ of these systems use water from the EMI Aqueduct System. Currently, most workers in the Central Maui agricultural fields use porta potties and this is expected to continue through full impmentation of the Mahi Pono farm plan, as the need and number of porta potties is largely dependent on planting / harvesting schedules.

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Impacts and Mitigation Measures

The Proposed Action is limited to the issuance of the Water Lease for the subject License Area, which would enable the applicant to continue operation of the EMI Aqueduct System that has been in operation for over a century. The Proposed Action continues the use of the EMI Aqueduct System system for the transport of surface water, which will allow for the transition of the agricultural fields in Central Maui to a diversified agriculture operation. In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of the DHHL. It is anticipated that all proposed water used in the office and processing facilities associated with the Mahi Pono farm plan (except for restrooms) will be recycled and re-used as part of Mahi Pono's Central Maui Field Irrigation System. Any limited needs for restroom facilities (which is projected to be even less than the prior uses during sugar cultivation and processing), may be served by transmission lines to the County wastewater system and/or by connecting to the Pu 'unēnē Mill facility, if permitted. As such, no ~~No~~ significant impacts on wastewater systems in the region are anticipated.

As discussed in Response #2, the 262-acres that the County of Maui acquired to expand the KAP are lands that A&B previously owned and used to farm sugarcane. A&B has no involvement in the timing of the County of Maui's use of the KAP expansion area, and no involvement in what the County of Maui will be doing with that land. The County of Maui is solely responsible for the use of that land as well as complying with any and all regulatory requirements.

Comment 37: *Regarding electricity, the DEIS does not discuss the impact that Mahi Pono Farm Plan will have on the existing electrical grid except for that the energy generated from their commercial solar farm will be provided to Maui Electric Company (MECO). There is no discussion on whether they will be buying back energy from MECO to power their operations (including the proposed buildings) or be self-sustainable and rely solely on their solar panels. This should also be analyzed for the proposed KAP expansion.*

Response 37: *Regarding Draft EIS Section 4.15.3 (Electrical System), in the section addressing Central Maui, with respect to electrical generation and electrical demands from the implementation of the Mahi Pono farm plan, at this time it is infeasible to project what the electrical needs will be at full implementation of the farm plan. However, it should be noted that the Central Maui agricultural fields have the ability to access power from MECO and for the purposes of clarity that statement has been added to the Final EIS at page ___ as follows: "*

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There are two hydroelectric facilities that utilize water derived from the EMI Aqueduct System. One is located in the area historically known as Kaheka Village, and the other at Pā‘ia. Currently, only Kaheka Hydroelectric plant is generating at a low load to fulfill house power demand for the office buildings, well security systems and well motor heaters. Excess generation is supplied to the utility grid with no compensation.

Generating hydroelectric power is a non-consumptive use of water and the water can subsequently be used for agricultural purposes after flowing through the hydroelectric facilities. Kaheka and Pā‘ia Hydroelectric Plants generate power to supply the many drip irrigation systems, groundwater well pumps, and facility/tenant buildings through a private 62-mile transmission grid throughout the Central Maui agricultural fields.

The Central Maui agricultural fields also have the ability to access power from MECO.

The Water Lease will allow the continued use of surface water for hydroelectric generation at the Kaheka and Pā‘ia plants.

Impacts and Mitigation Measures

The Proposed Action is limited to the issuance of the Water Lease for the subject License Area, which would enable the applicant to continue operation of the EMI Aqueduct System that has been in operation for over a century. The Proposed Action continues the use of the EMI Aqueduct System system for the transport of surface water, which will allow for the transition of the agricultural fields in Central Maui to a diversified agriculture operation. The farm plan contemplated in relation to the Proposed Action includes a solar farm(s) to generate 37.5 MW mW of clean energy to be provided to the MECO grid and/or for Mahi Pono’s farm operations. Although Mahi Pono does not intend to rely on MECO power, Mahi Pono intends to retain a connection to the MECO grid in any event, and that connection would support back up and off-peak power needs, if needed. In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of the DHHL. No significant impacts on electrical systems in the region are anticipated.

The Central Maui subsection of Section 4.15.3 also explains that power needs for the Central Maui agricultural fields are also supplied by two hydroelectric power sources that supply the many drip irrigation systems, groundwater well pumps, and facility/tenant buildings through a private 62-mile transmission grid throughout the Central Maui agricultural fields. Use of those

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power sources has been in place for years, starting prior to Mahi Pono's acquisition of the Central Maui agricultural lands.

Mahi Pono proposes up to two solar farms within the Central Maui agricultural fields, and has identified the areas for those farms. See EIS Figure 2-6 (Mahi Pono Farm Plan) “Green Energy” locations. However, at this point the timing and development of these solar farms is uncertain. As planned, one of these solar farms would supply energy to the electrical grid and not to power any uses within the Central Maui fields. The other solar farm would be used for power to Mahi Pono’s facilities. The use of a solar farm for Mahi Pono’s facilities may also be supplemented by separately installed solar panels at the farm processing facilities and well sites. In sum, although the Central Maui agricultural fields have access to MECO power, it is anticipated that power need will be largely self-supplied. Thus, for clarity and in response to your comment, the following additional text as shown above has been added to the Central Maui subsection of Section 4.15.3:

In response to your comment about the KAP, as previously noted, the County of Maui has sole responsibility for the development of the KAP expansion area. The County of Maui is solely responsible for the use of that land as well as complying with any and all regulatory requirements.

Comment 38: *Section 5.1.3 State Land Use District mentions that the license area is located within the Conservation District, but the subzone and its objectives are omitted from needed discussion.*

Response 38: The majority of the License Area is located within the “Protective” subzone of the Conservation District while portions are within the “Limited” and “Resource” subzones. This information and a discussion regarding the Conservation District subzones and objectives has been added to Section 5.1.3 of the Final EIS at pages 5-36 to 5-39

Comment 39: *We trust that the grammatical errors throughout the DEIS will be corrected in the final EIS. While these comments are many, we note that the EIS Preparation Notice was published in the February 8, 2017 edition of the Office of Environmental Quality Control's The Environmental Notice and therefore did not cover the Mahi Pono Farm Plan nor the KAP expansion, since these land acquisitions did not take place until 2018. This would naturally explain the void in the DEIS and our substantial comments found herein. In addition, given our extensive comments on the document, we believe that once the deficiencies are addressed, the DEIS should be republished as a second DEIS in order to allow the public to have an opportunity to comment of any new/additional information provided regarding the project(s).*

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Response 39: We have carefully attempted to correct all grammatical errors in the Final EIS. With respect to your comment about the EISPN, you are correct that at the point of publication of the EISPN the Mahi Pono farm plan was unknown, as Mahi Pono had not yet purchased the Central Maui agricultural lands from A&B/HC&S. However, even at the point of the EISPN publication, the transition from sugarcane to diversified agriculture in the approximately 30,000 acres in Central Maui was contemplated. However, more importantly, the parameters of the Mahi Pono farm plan were presented in the Draft EIS, which was published well after Mahi Pono acquired the Central Maui land, and the text of the Draft EIS and the applicable technical studies took the Mahi Pono farm plan into account. As such, your statement about a “void” is unclear. Information responding to your comments about the Mahi Pono farm plan is contained in this letter and in the EIS. The Draft EIS fully assessed the anticipated impacts in the Central Maui agricultural fields related to the issuance of the proposed Water Lease. All relevant technical reports contemplate the implementation of the Mahi Pono farm plan. It is unclear what deficiencies you are referring to. Data and analyses in an EIS shall be commensurate with the importance of the impact. HAR § 11-200-19. The EIS contains appropriate data and analysis of the matters of environmental relevance to the Water Lease.

Similarly, the County's ability to continue to make use of East Maui surface water at the KAP, or the KAP expansion area, if the Water Lease gets issued, was disclosed from the start. To the extent the KAP expansion could have any impacts to agricultural or other fiscal and economic impacts, those impacts are addressed within the technical reports within the sections addressing impacts in the Upcountry Maui area. For the avoidance of any confusion, we repeat that the Applicant is not involved in any way with existing or future uses at KAP or the expansion area, as activities to be taken at the KAP expansion area, if any, are not a project within the scope of this Water Lease EIS. The Proposed Action, i.e. the proposed Water Lease, is independent from any future activities at KAP. As discussed throughout this response letter, the County of Maui is solely responsible for the use of that land as well as for complying with any and all regulatory requirements related to that use.

We respectfully disagree with your comment that a second Draft EIS should be published. The Draft EIS fully complied with all relevant requirements, including the content requirements set forth in § 11-200-16 and 11-200-17, and the Draft EIS also included a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement. Alternatives to the proposed Water Lease, including the alternative of no Water Lease, are thoroughly assessed within Chapter 3.

The impacts of the proposed Water Lease are addressed in Chapter 4, which provides a comprehensive description and impact analysis of the East Maui License Area, as well as the water use areas of Upcountry Maui and the Central Maui agricultural fields. The analysis in Chapter 4 considered conditions, impacts, and mitigations under numerous environmental

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measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. The Draft EIS also included and relied upon nine technical studies, provided as Appendix A through I, as follows : Appendix A, Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP Model); Appendix B, East Maui Irrigation Assessment of Streams and the Ocean; Appendix C, Terrestrial Flora and Fauna Technical Report; Appendix D, Historical Structure Assessment; Appendix E, Archaeological Literature Review and Field Inspection; Appendix F, Cultural Impact Assessment; Appendix G, Social Impact Assessment; Appendix H, Economic and Fiscal Impact Study; and Appendix I, Agricultural and Related Economic Impacts.

The Hawaii Environmental Policy Act (HEPA) establishes “a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations” and is intended to “integrate the review of environmental concerns with existing planning processes” and to “alert decision makers to significant environmental effects which may result from the implementation of certain actions.” Kilakila 'O Haleakala v. University of Hawaii, 138 Hawaii 364, 369-370 (2016), citing HRS § 343-1. However,

. . . an EIS need not be exhaustive to the point of discussing all possible details bearing on the proposed action but will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between alternatives.

Hanabusa v. Department of Environmental Services, 133 Hawai'i 452 (2014) (quoting Price v. Obayashi Hawaii Corp., 81 Hawai'i 171, 182 (1996). "The environmental laws were neither meant to be used as a “crutch” for chronic fault-finding, nor as a means of delaying the implementation of properly accepted projects." Price v. Obayashi Hawaii Corp., 81 Hawai'i at 182-3 n. 12.

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As the Hawaii Supreme Court has explained that HEPA, like the National Environmental Policy Act of 1969 (NEPA), serves primarily as a procedural framework under which an agency may evaluate and consider the environmental, social, and economic factors of a proposed action prior to taking action. *Id.* As confirmed by the Hawaii Supreme Court, HEPA was patterned after NEPA. See *id.* at n. 7. Republication of a Draft EIS is not the norm unless there have been substantial changes to the proposed action. NEPA does not require an additional round of public comment every time an applicant revises, supplements, or improves its analysis in response to comments received on the Draft EIS. To the contrary, such changes are expected and encouraged. If republication were required for every revision made between a Draft and Final EIS, that would only serve to discourage applicants from making corrections and improvements in response to public comments, which is entirely contrary to the purposes of HEPA. See *Mid States Coalition for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 548 (8th Cir. 2003). The measure of whether republication is appropriate is not the literal number of changes or "redlines" in the Final EIS. The decision turns on whether the Final EIS discloses changes to the project or its impacts that are both substantial and relevant to environmental concerns. i.e. new information that is likely to affect the quality of the environment in a significant manner or to a significant extent not already considered. *Swanson v. U.S. Forest Service*, 87 F.3d 339, 344 (9th Cir. 1996) citing *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374, 109 S.Ct. 1851, 1859, 104 L.Ed.2d 377 (1989).

The revisions made between the Draft and Final EIS were to address public comments; to include updated/public information on topics addressed in the Draft EIS; to provide clarification or expanded explanations of topics covered in the Draft EIS, often in response to comments received; or to pull information from the Draft EIS appendices into Final EIS. As required under HAR § 11-200-18, a Final EIS consists of "the draft EIS revised to incorporate substantive comments received during the consultation and review processes." Under HAR § 11-200-23(b), the Final EIS must show that comments submitted during the review process have received satisfactory responses and have been incorporated in the Final EIS. In other words, HEPA, like NEPA, contemplates that the Draft EIS document will change in response to public comments, exactly as happened in this case. There have not been any changes to the proposed Water Lease or its impacts that are likely to affect the quality of the environment in a significant manner or to a significant extent that was not already raised in the Draft EIS. As such, we disagree that republication is appropriate.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

November 14, 2019

Christopher Benjamin
President & Chief Executive Officer
Alexander & Baldwin Inc. (A&B)/East Maui Irrigation Company, Limited (EMI)
822 Bishop Street
Honolulu, HI 96813

Dear Mr. Benjamin,

**SUBJECT: Request for Second 45 Day Comment period for East Maui Water
Draft EIS**

On behalf of my constituents I would like to request that you agree to issue a second 45-day comment period for the East Maui Water Draft EIS.

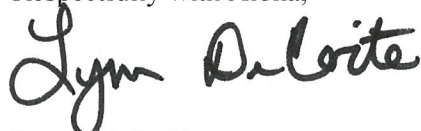
I am aware that the first comment period was announced in the Office of Environmental Quality Control's September 23, 2019 Issue of *The Environmental Notice* with the comment period ending November 7, 2019. Many of my constituents have reached out to my office to request that the comment period be extended due to the length of the Draft EIS (2700 pages) and the impact that this document has on the East Maui Community and their water.

Also, due to the fact that the Governor just issued new rules to the EIS process on August 9, 2019, there was confusion as to how many opportunities the community would have to comment and under what timeframe.

While I recognize that this Draft EIS is grandfathered in under the rules that were in place when you issued your prep notice in February of 2017, issuing a second 45-day comment period would show a good faith effort to the community that A&B gave every opportunity for them to submit their comments and concerns.

Thank you for your consideration on this matter. If you would like to speak to me directly about this request, please call my office at (808)586-6790.

Respectfully with Aloha,



Lynn DeCoite
State House of Representatives
District 13

cc: Governor David Y. Ige, State of Hawaii, State Capitol 5th Floor, Honolulu, Hawaii, 96813
Suzanne Case, Chairperson, Department of Land and Natural Resources, 1151 Punchbowl Street,
Honolulu, HI 96813
Board of Land and Natural Resources, State of Hawai'i,
Attn: Mr. Ian Hirokawa, (808) 587-0400, ian.c.hirokawa@hawaii.gov 1151 Punchbowl Street,
Honolulu, HI 96813
Wilson Okamoto Corporation; Attn: Mr. Earl Matsukawa 1907 S. Beretania Street, Suite 400, Honolulu,
HI 96826, (808) 946-2277, waterleaseeis@wilsonokamoto.com



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10238-04
September 3, 2021

Representative Lynn DeCoite
State House of Representatives
District 13
Hawai'i State Capital
415 S. Beretania Street, Room 441
Honolulu, HI 96813

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Representative DeCoite:

Thank you for comments dated November 14, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am aware that the first comment period was announced in the Office of Environmental Quality Control's September 23, 2019 Issue of The Environmental Notice with the comment period ending November 7, 2019. Many of my constituents have reached out to my office to request that the comment period be extended due to the length of the Draft EIS (2700 pages) and the impact that this document has on the East Maui Community and their water.*

Response 1: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

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Letter to Representative Lynn DeCoite
Page 2 of 3
September 3, 2021

Comment 2: *Also, due to the fact that the Governor just issued new rules to the EIS process on August 9, 2019, there was confusion as to how many opportunities the community would have to comment and under what timeframe.*

Response 2: We acknowledge your comments. However, please note that the period for public comment associated with the Draft EIS under both the old rules and the new rules for the EIS process is the same – 45-days.

Comment 3: *While I recognize that this Draft EIS is grandfathered in under the rules that were in place when you issued your prep notice in February of 2017, issuing a second 45-day comment period would show a good faith effort to the community that A&B gave every opportunity for them to submit their comments and concerns.*

Response 4: As noted in Response #1 above, the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Letter to Representative Lynn DeCoite
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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

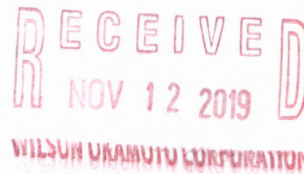
**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

November 7, 2019

In reply refer to:
PO-19-247

Mr. Earl Matsukawa, AICP
Wilson Okamoto Corporation
1907 S. Beretania Street, Suite 400
Honolulu, Hawai'i 96826
waterleaseeis@wilsonokamoto.com



Dear Mr. Matsukawa:

Subject: Draft Environmental Impact Statement (EIS) for the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū and Huelo License Areas

The Department of Hawaiian Home Lands (DHHL) acknowledges receiving the request for comments on the above-cited project which concerns waters developed and delivered by the East Maui Irrigation (EMI) system. The project may have a material and adverse effect on the Department and its rights, including its ability to fulfill the goals for its lands in the DHHL Maui Island Plan. DHHL offers the background information and comments below.

Trust and Legal Background

DHHL has substantial and broad interests in state water leases, including the one sought here. DHHL and our beneficiaries have at least three distinct interests when water leases are pursued by private parties under HRS 171-58.

DHHL water reservations related to state water leases

First, as the EIS notes on page 2-2, HRS 171-58 (g) requires that "The Department of Land and Natural Resources shall notify the Department of Hawaiian Home Lands of its intent to execute any new lease, or to renew any existing lease of water rights. After consultation with affected beneficiaries, these departments shall jointly develop a reservation of water rights sufficient to support current and future homestead needs. Any lease of water rights or renewal shall be subject to the rights of the department of Hawaiian home lands as provided by section 221 of the Hawaiian Homes Commission Act."

NAME: MR. EARL MATSUKAWA
DATE: NOVEMBER 7, 2019
PAGE: # 2

This part of Hawai`i law has not been fully implemented since its passage by the Legislature in 1991, as the state has yet to issue a water lease under HRS 171-58. However, we have been working closely for at least the last two years with our beneficiaries, staff from the Department of Land and Natural Resources (DLNR), and other potential lessors in order to efficiently implement this requirement. Together, DLNR and DHHL staff have determined that reservation requests for surface and/or groundwater associated with a proposed lease will be made by the Commission on Water Resource Management (CWRM) before being incorporated into any lease from DLNR. Reservation requests are based on the water demands associated with DHHL lands, if any, that could foreseeably use some portion of the demised water. DHHL first holds a formal consultation process with its beneficiaries prior to requesting the reservation from CWRM and the inclusion of any related lease provisions by the Board of Land and Natural Resources (BLNR) into the DLNR lease

DHHL Beneficiary water rights related to state water leases

In addition to the rights to reserved water in state water leases, DHHL beneficiaries may conduct traditional and customary practices associated with the waters that entities may seek to lease from the state. In the particular case of the water lease you seek, there is extensive evidence that there are significant traditional and customary practices that have been exercised in the areas from which water is diverted.

DHHL rights to revenue associated with state water leases

Finally, DHHL is entitled by Constitutional provision to 30% of the revenue generated by state water leases (Hawai`i Constitution Article XII Section I). Funds from this source are devoted exclusively to the Native Hawaiian Rehabilitation Fund, which supports projects on DHHL lands and for beneficiaries.

Specific Comments

For the following comments, the pagination noted is first for the number on the bottom of the EIS page, and then in parentheses for the page number of the pdf.

Page iv (25): EIS states that “Until that reservation is physically claimed, however, the water will remain available for use by the lessee under the Water Lease.” Similarly:

Page 2-2 (63): EIS states that “Until that reservation is physically claimed, however, it will be available for use by the lessee.”

- DHHL believes that this language is presumptive and may not be accurate, as no water lease has yet to be issued in compliance with HRS 171-58 and the manner in which reservations are actualized has yet to be determined. In addition to any specifications made by the CWRM and BLNR regarding a water lease, a separate agreement between

NAME: MR. EARL MATSUKAWA

DATE: NOVEMBER 7, 2019

PAGE: # 3

the lessor and the DHHL will be necessary to allow any temporary use of water reserved for DHHL.

Page 3-1 (84) 3.1.1 Water Sources Alternatives

- DHHL believes that the dismissal of full examination of alternative sources of water, particularly water from lands in central Maui and water derived from lands owned by EMI, Alexander & Baldwin and/or Mahi Pono in East Maui, which are also developed and delivered by the EMI system, is unjustified. Mere assertions that an alternative is not viable does not meet the requirements or intent of HRS 343 which governs the preparation of an EIS.
- Moreover, the EIS must assist the BLNR in fulfilling its constitutional and statutory duties to protect Public Trust uses of water and traditional and customary practices of Native Hawaiians. The dismissal by assertion that alternate sources of water are not a viable alternative completely fails to provide to BLNR the informational bases necessary for BLNR to make specific findings and provide mitigative conditions as required and explained by the Hawai`i Supreme Court in its Kaua`i Springs (Kauai Springs, Inc. v. Planning Commission of the County of Kaua`i, 133 Hawai`i 141) and Ka Pa`akai (94 Haw. 31) decisions.

Page 4-116 et. Seq. (229 et. Seq.): Analysis of cultural impacts

- The analysis of potential cultural impacts is inadequate under the Ka Pa`akai decision (94 Haw. 31). In that decision the state Land Use Commission was reversed for determining the level of impacts after a permit was issued and attempting to delegate mitigation to the developer, as is proposed here.
- DHHL also believes the analysis is inadequate under HRS Ch. 343, as it does not examine any way in which mitigation of impacts on traditional and customary practices could be accomplished through either lowering diversion amounts and/or modification of diversion structures that could decrease impacts on biocultural resources.

Page V (26): "The Water Lease would allow the use of government-owned waters from the License Area through the EMI Aqueduct System."

- This statement is legally incorrect as there is no private property in water in Hawai`i, and hence no "government-owned" waters or "privately-owned" waters." All waters are controlled by the state for the benefit of its people. See *McBryde Sugar Co. v. Robinson*, 54 Haw. 174

Page 5-1 et. Seq (313 et. seq.) Section 5.0 Relationships to Plans, Policies & Controls.

- The Draft EIS identifies DHHL's water reservations and planning system in section 2.1.1. However, consistency DHHL's General Plan, Water Policy Plan, Maui Island Plan, Regional Plan and Development Plans must be assessed and included in section 5.

NAME: MR. EARL MATSUKAWA
DATE: NOVEMBER 7, 2019
PAGE: # 4

The proposed project has the potential to impact DHHL's Maui land holdings and beneficiaries. We highly encourage you to consult with Hawaiian Homestead community associations and other (N)ative Hawaiian organizations to better assess potential impacts to cultural and natural resources, access and other rights of Native Hawaiians. A list of some of our DHHL homestead associations may be found at <https://dhhl.hawaii.gov/homestead-associations/>.

Mahalo for the opportunity to provide comments. If you have any questions, please call Malia Cox, at 620-9485 or contact via email at malia.m.cox@hawaii.gov.

Aloha,



William J. Ailā Jr., Chairman
Hawaiian Homes Commission

C: Mr. Ian Hirokawa, Board of Land and Natural Resources- via email
ian.c.hirokawa@hawaii.gov

APPLICANT PUBLICATION FORM

Project Name: Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas
Project Short Name: DEIS East Maui Water Lease
HRS §343-5 Trigger(s): Use of State land
Island(s): Maui
Judicial District(s): Makawao and Hāna
TMK(s): 1-2-004:005, 007; 1-1-002:002; 1-1-001:44, 050; and, 2-9-014:001, 005, 011, 012, 017
Permit(s)/Approval(s): Application for a long-term lease of State land in the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas
Approving Agency: Board of Land and Natural Resources
Contact Name, Email, Telephone, Address Mr. Ian Hirokawa, ian.c.hirokawa@hawaii.gov, (808) 587-0400, 1151 Punchbowl St. Honolulu, HI 96813
Applicant: Alexander & Baldwin Inc. (A&B)/East Maui Irrigation Company, Limited (EMI), collectively referred to as “A&B”
Contact Name, Email, Telephone, Address A&B / EMI, waterleaseeis@wilsonokamoto.com
Consultant: Wilson Okamoto Corporation
Contact Name, Email, Telephone, Address Mr. Earl Matsukawa AICP, waterleaseeis@wilsonokamoto.com, (808) 946-2277, 1907, S. Beretania Street, Suite 400 Honolulu, HI 96826

Status (select one)

DEA-AFNSI **Submittal Requirements**
 Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the DEA, and 4) a searchable PDF of the DEA; a 30-day comment period follows from the date of publication in the Notice.

FEA-FONSI **Submittal Requirements**
 Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the FEA, and 4) a searchable PDF of the FEA; no comment period follows from publication in the Notice.

FEA-EISPN **Submittal Requirements**
 Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the FEA, and 4) a searchable PDF of the FEA; a 30-day comment period follows from the date of publication in the Notice.

Act 172-12 EISPN (“Direct to EIS”) **Submittal Requirements**
 Submit 1) the approving agency notice of determination letter on agency letterhead and 2) this completed OEQC publication form as a Word file; no EA is required and a 30-day comment period follows from the date of publication in the Notice.

DEIS **Submittal Requirements**
 Submit 1) a transmittal letter to the OEQC and to the approving agency, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the DEIS, 4) a searchable PDF of the DEIS, and 5) a searchable PDF of the distribution list; a 45-day comment period follows from the date of publication in the Notice.

FEIS **Submittal Requirements**
 Submit 1) a transmittal letter to the OEQC and to the approving agency, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the FEIS, 4) a searchable PDF of the FEIS, and 5) a searchable PDF of the distribution list; no comment period follows from publication in the Notice.

FEIS Acceptance Determination **Submittal Requirements**
 The approving agency simultaneously transmits to both the OEQC and the applicant a letter of its determination of acceptance or nonacceptance (pursuant to Section 11-200-23, HAR) of the FEIS; no comment period ensues upon publication in the Notice.

FEIS Statutory Acceptance **Submittal Requirements**
 The approving agency simultaneously transmits to both the OEQC and the applicant a notice that it did not make a timely determination on the acceptance or nonacceptance of the applicant’s FEIS under Section 343-5(c), HRS, and therefore the applicant’s FEIS is deemed accepted as a matter of law.

Supplemental EIS Determination **Submittal Requirements**
 The approving agency simultaneously transmits its notice to both the applicant and the OEQC that it has reviewed (pursuant to Section 11-200-27, HAR) the previously accepted FEIS and determines that

Office of Environmental Quality Control

Applicant Publication Form

February 2016 Revision

a supplemental EIS is or is not required; no EA is required and no comment period ensues upon publication in the Notice.

- Withdrawal Identify the specific document(s) to withdraw and explain in the project summary section.
- Other Contact the OEQC if your action is not one of the above items.

Project Summary

Provide a description of the proposed action and purpose and need in 200 words or less.

The Proposed Action constitutes the issuance of a long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System. It will also allow the continued provision of water to approximately 30,000 acres of agricultural lands (formerly in sugarcane) in Central Maui.



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10238-04
September 3, 2021

Mr. William Ailā Jr.
Chairperson
Department of Hawaiian Home Lands
State of Hawai‘i
P.O. Box 1879
Honolulu, HI 96805

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Chairperson Ailā Jr.:

Thank you for comments dated November 7, 2019 (Ref. No. PO-19-247) regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The Department of Hawaiian Home Lands (DHHL) acknowledges receiving the request for comments on the above-cited project which concerns waters developed and delivered by the East Maui Irrigation (EMI) system. The project may have a material and adverse effect on the Department and its rights, including its ability to fulfill the goals for its lands in the DHHL Maui Island Plan. DHHL offers the background information and comments below.*

Response 1: We acknowledge your comment asserting that the Proposed Action may have a material and adverse effect on the Department of Hawaiian Home Lands (DHHL) and its rights, including its ability to fulfill the goals for its lands described in the DHHL Maui Island Plan. It is not clear from your comment, however, how the proposed Water Lease would have an adverse effect on DHHL or DHHL's ability to fulfill its goals for DHHL lands in the DHHL Maui Island Plan. The Draft EIS clearly stated in Section 2.1.1 that the proposed Water Lease is subject to DHHL's rights to reserve water as provided under Hawai‘i Revised Statutes (HRS) § 171-58(g),

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Letter to Chairperson William Ailā Jr.

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and that such reservation would serve to support DHHL by serving as the water source for DHHL's planned activities. It is our understanding that the DHHL Maui Island Plan is one component of a planning system developed by the DHHL to guide the use of Hawaiian home lands Statewide and that island plans are the primary policy documents that guide land-uses for Hawaiian home lands. The purpose of the DHHL Maui Island Plan is to support the DHHL and the beneficiaries in participating in the County of Maui's planning for the future. We understand that the DHHL land-use planning goals and objectives include the following:

- Using Hawaiian home lands for uses most appropriate to meet the needs and desires of the beneficiary population; and
- Directing urban growth to priority development areas based on infrastructure availability, feasible site conditions, beneficiary preferences and job opportunities.

Hence, the DHHL Maui Island Plan provides baseline physical and demographic information; establishes land-use designations to encourage orderly social, physical, and economic development; identifies priority areas for homestead development over a set timeframe; and estimates the costs for both on- and off-site infrastructure needed to advance the goals and objectives of the homesteading program on the island of Maui.

With that understanding, it is our belief that the Proposed Action will not have an adverse effect on the DHHL and its rights, including the ability to fulfill the goals for its lands in the DHHL Maui Island Plan as the Proposed Action is subject to DHHL's rights to reserve water as provided under HRS § 171-58(g), and that such reservation would serve to support DHHL by serving as the water source for DHHL's planned activities as discussed in Section 2.1.1 of the Draft EIS.

Comment 2: Trust and Legal Background. *DHHL has substantial and broad interests in state water leases, including the one sought here. DHHL and our beneficiaries have at least three distinct interests when water leases are pursued by private parties under HRS 171-58.*

Response 2: We acknowledge your comments asserting DHHL's substantial and broad interests in State water leases, including the proposed Water Lease assessed in the EIS. We further acknowledge that DHHL and its beneficiaries have at least three distinct interests in water leases when pursued by private parties under HRS § 171-58, as addressed below.

Comment 3: DHHL water reservations related to state water leases. *First, as the EIS notes on page 2-2, HRS 171-58 (g) requires that "The Department of Land and Natural Resources shall notify the Department of Hawaiian Home Lands of its intent to execute any new lease, or to renew any existing lease of water rights. After consultation with affected beneficiaries, these*

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Letter to Chairperson William Ailā Jr.

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September 3, 2021

departments shall jointly develop a reservation of water rights sufficient to support current and future homestead needs. Any lease of water rights or renewal shall be subject to the rights of the department of Hawaiian home lands as provided by section 221 of the Hawaiian Homes Commission Act."

This part of Hawai'i law has not been fully implemented since its passage by the Legislature in 1991, as the state has yet to issue a water lease under HRS 171-58. However, we have been working closely for at least the last two years with our beneficiaries, staff from the Department of Land and Natural Resources (DLNR), and other potential lessors in order to efficiently implement this requirement. Together, DLNR and DHHL staff have determined that reservation requests for surface and/or groundwater associated with a proposed lease will be made by the Commission on Water Resource Management (CWRM) before being incorporated into any lease from DLNR. Reservation requests are based on the water demands associated with DHHL lands, if any, that could foreseeably use some portion of the demised water. DHHL first holds a formal consultation process with its beneficiaries prior to requesting the reservation from CWRM and the inclusion of any related lease provisions by the Board of Land and Natural Resources (BLNR) into the DLNR lease.

Response 3: Your comments regarding the DHHL water reservation process, which is described in Chapter 2 of the Draft EIS, are acknowledged. We also concur with your comment that the State has yet to issue a water lease under HRS § 171-58, and, therefore, the implementation of a DHHL reservation under subsection (g) has yet to be realized. We understand that the DHHL water reservation process involves several steps before a water reservation is formally requested. One step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following acceptance by the Hawaiian Homes Commission (HHC) of the Beneficiary Consultation Report, and an authorization to the Chairperson of the HCC to formally request a water reservation, the Chairperson submits a request for a water reservation to the Commission on Water Resource Management (CWRM). CWRM approval is required to establish a DHHL water reservation for purposes of a water lease.

Section 2.1.1 of the Draft EIS explains that the DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B / EMI, Mahi Pono, the DLNR's Land Division, and DHHL staff and consultants. Section 2.1.1 has been updated in the Final EIS as shown on pages 2-4 to 2-7 to acknowledge that the results of the Beneficiary Consultation were subsequently presented to the HHC on May 30, 2019, as agenda item G-2. The HHC then passed a motion to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for a water lease from DLNR, and to reauthorize the Chairperson to formally request a related water reservation from CWRM for

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Hawaiian Home Lands on Maui. The reservation amount in the request approved by the HHC is for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Kēōkea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This reservation amount is consistent with that projected in the Draft EIS. The revisions updating Section 2.1.1 in the Final EIS, as discussed above, are shown on pages 2-4 to 2-7. As of the time that this response letter was drafted, it is our understanding the water reservation request has not been made to CWRM.

Comment 4: DHHL Beneficiary water rights related to state water leases. *In addition to the rights to reserved water in state water leases, DHHL beneficiaries may conduct traditional and customary practices associated with the waters that entities may seek to lease from the state. In the particular case of the water lease you seek, there is extensive evidence that there are significant traditional and customary practices that have been exercised in the areas from which water is diverted.*

Response 4: We acknowledge that Native Hawaiian traditional and customary practices are protected under Article XII, § 7 of the Hawai‘i Constitution:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the rights of the State to regulate such rights.

As observed by the CWRM in its Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O), at Conclusions of Law (COL) 56:

56. A claimed right is constitutionally protected as a customary or traditional native Hawaiian right under article XII, § 7 of the Hawai‘i Constitution, or §§ 1-1 or 7-1, HRS if the following is shown:
 - a. The practice must be related to extended family needs; the purpose must be to fulfill a responsibility related to subsistence, religious or cultural needs of one’s family or extended family;
 - b. The traditional or customary native Hawaiian practice must be traceable to at least November 25, 1892;
 - c. The practice cannot be for a commercial purpose; and

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September 3, 2021

- d. The manner in which the practice is conducted must be consistent with the tradition and custom and the practice must be conducted in a respectful manner.

(citing *State v. Pratt*, 124 Hawai‘i 329, at 349-55, 243 P.3d 289, at 309-315 (App. 2010).

The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “*existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.*” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “*for domestic purposes and the irrigation of kuleanas entitled to the same.*” See CWRM D&O, Finding of Fact (FOF) 55.

Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water. . .*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated to honor all constitutionally protected traditional and customary rights.

We believe that the Draft EIS adequately discusses the impacts of the Proposed Action both in terms of the effects on habitat and resources and on traditional and customary Native Hawaiian practices. Specifically, in terms of habitat, Appendix A and Section 4.2.1 of the Draft EIS presented the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model that was used to quantify the impacts of flow restoration on native stream animal habitat to determine an appropriate balance between instream and offstream water uses. Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B (East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry) of the EIS. Impacts to terrestrial flora and fauna, including threatened and endangered species, are analyzed in Section 4.4 and Appendix C (Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease) of the EIS. As it relates to archaeological resources, please note that Cultural Surveys Hawai‘i (CSH) provides a detailed and comprehensive Archaeological Literature Review and Field Inspection (LRFI) accounting the history of East Maui. This report is included in Appendix E and summarized in Section 4.5 of the EIS. The EIS also includes an assessment of effects on the Native Hawaiian traditional and customary resources and practices through the Cultural Impact Assessment (CIA) prepared by CSH and provided as Appendix F to the EIS. The CIA follows the Environmental Council’s Guidelines for Assessing Cultural Impacts, including the following protocol: 1) identification of and consultation with individuals and organizations with expertise in the resources, practices and beliefs found within the broad geographical area or ahupua‘a; 2) identification of and consultation with those of knowledge of the potentially

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affected area; 3) gathering information and conducting interviews with those of knowledge of the potentially affected area; 4) conducting historical and other culturally related documentary research; 5) identifying and describing the cultural resources, practices, and beliefs connected to the potentially affected area; and, 6) assessing the impact, alternatives, and measures to mitigate the proposed action on the cultural resources, practices and beliefs identified through this process.

The information provided satisfies the EIS content requirements. This information will also inform BLNR when it is deliberating on the issuance and terms of the Water Lease. Under the Public Trust Doctrine, BLNR will have to balance competing considerations before making a decision on the Water Lease. The balancing that BLNR is required to perform under the Public Trust Doctrine was described at length by the Hawai‘i Supreme Court in *In Re Water Use Permit Applications*, 94 Hawai‘i 97, 9 P. 3d 409 (2000) (“Waiahole I”) and summarized in Section 1.5 of the Final EIS as shown on pages 1-25 to 1-27.

With regard to the potential effects of the Proposed Action on traditional and customary practices, as discussed in the *Ka Pa ‘akai* decision, we acknowledge that BLNR will be required to “to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible.” *Ka Pa ‘akai O Ka ‘Aina v. Land Use Comm’n*, 94 Hawai‘i 31, 35, 7 P. 3d 1068, 1072 (2000) (“*Ka Pa ‘akai*”). BLNR has previously so stated in its Findings of Fact, Conclusions of Law, and Decision and Order filed on March 23, 2007 in the contested case proceeding that is still pending regarding the Proposed Action (the 2007 D&O) as follows:

Public trust principles require that adequate provision be made for the protection of ***traditional and customary Hawaiian rights***, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture and navigation.

2007 D&O COL No. 6 at page 41 (citing *Waiahole I*). CWRM, in its June 20, 2018 D&O, also recited the State’s constitutional obligation to consider the impacts of stream diversions in East Maui on traditional and customary practices of Native Hawaiians at pages 242 through 245, including the Supreme Court of Hawai‘i’s more recent holding on this subject in *State v. Pratt*, 127 Hawai‘i 206, 277 P. 3d 300 (2012).

The CIA prepared by CSH (included as Appendix F to the Draft EIS) identified several practices related to the License Area. The CIA identified the following traditional and customary cultural practices associated with natural and cultural resources which are presented in Section 4.6 of the Draft EIS:

- 1) *Foraging, traditional, and generational gathering of freshwater species for personal consumption. These species include but are not limited to ‘ōpae, ‘o ‘opu,*

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pūpūlo‘i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa).

- 2) *Foraging, traditional, and generational gathering of plants that may be in or adjacent to tributaries for personal consumption. These species include but are not limited to pohole (native fiddlehead fern) and watercress.*
- 3) *Traditional and generational gathering of introduced plants that can be cultivated or foraged. These species include but are not limited to (young taro tops), guava, ‘uala (sweet potato), ‘awapuhi (wild ginger), tī, oranges, hāhā, avocado, puakenikenī (ornamental, flowers used for lei), and medicinal plants for lā‘au lapa‘au (curing medicine).*
- 4) *Traditional and generational gathering of plants that can only be foraged. This includes but is not limited to pepeiao, various types of ferns (ornamental), and hau (beach hibiscus; Hibiscus tiliaceus).*
- 5) *Traditional and generational gathering of rocks that are used for traditional food preparation. These activities include but are not limited to imu (underground oven) and the production of stone tools for traditional food preparation (i.e., pōhaku ku‘i ‘ai).*
- 6) *Traditional and generational fishing and gathering methods utilized for the shoreline and offshore. Species gathered include but are not limited to limu (seaweed), ‘opihi (limpets), lobster, enenuē, kole, ulua, moi, aholehole, ‘anae, kumu, tako, moanakali, ‘ōmilu, ‘ū‘ū/menpachi (soldierfish; Holocentridae), ‘āweoweo (Bulleye; eki), pāpio, pa‘ananu, ‘ō‘io, uhu, lae, kala, black crab, hā‘uke‘uke, and kūpipi.*

Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in Section 4.6 of the Final EIS, which has been updated to include the information obtained in the additional consultation as shown on the pages 4-158 to 4-159. The CIA, and Section 4.6 of the Final EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action as shown on pages 4-239 to 4-252. Section 4.6 of the Final EIS also includes three tables which identify cultural practices in the License Area via: (1) approved interviews and the declarations submitted in the petitions to amend the Interim Instream Flow Standards (IIFS) proceedings before the CWRM that resulted in the CWRM D&O (Table 4-13); (2) declarations submitted in the IIFS proceedings (anonymously) (Table 4-14); and (3) approved interviews and the declarations organized by stream (Table 4-15).

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It is also noted that following receipt of the Draft EIS comments, CSH invited Chairperson Aila to participate and engage in consultation, as summarized in Section 5.4 of the CIA (Appendix F). However, Chairperson Aila did not respond to CSH's requests.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and those mitigation measures within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of optical encoders with float tape and data loggers within the EMI Aqueduct System; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures. Section 4.6 of the Final EIS has been updated to include the recommendations by CSH, as shown on pages 4-239 to 4-252.

Comment 5: *DHHL rights to revenue associated with state water leases. Finally, DHHL is entitled by Constitutional provision to 30% of the revenue generated by state water leases (Hawai'i Constitution Article XII Section I). Funds from this source are devoted exclusively to the Native Hawaiian Rehabilitation Fund, which supports projects on DHHL lands and for beneficiaries.*

Response 5: We acknowledge, as stated in Section 2.1.1 of the Draft EIS, that the DHHL has rights to a portion of the funds received by the State under a water lease. Section 2.1.1 provides in relevant part, "*thirty percent (30%) of the revenues derived from all water leases issued by the State are deposited into the Native Hawaiian Rehabilitation Fund pursuant to Hawai'i State*

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Constitution Article XII, Section 1, and is used to fund programs as prioritized in the Native Hawaiian Development Program Plan adopted by the Hawaiian Homes Commission."

Moreover, the anticipated 30% revenue generated by the proposed State Water Lease is further discussed in detail in Section 4.7.3.1 of the EIS. Specifically, Section 4.7.3.1 of the Final EIS which has been updated to take into account the most recent revocable permit for 2021 states:

The amount paid to the State Special Land Development Fund for the Water Lease would be based on an appraisal conducted prior to issuance of the Water Lease which is within the purview of the BLNR as required under HRS Chapter 171. Assuming the amount of the Water Lease is based on the equivalent per unit cost under the existing revocable permits, the annual payment to the Special Land Development Fund would be ~~\$846,700~~ \$427,000. Of this, ~~\$169,300~~ \$85,400 would be disbursed to OHA and ~~\$254,000~~ \$128,100 would be set aside for the DHHL. GET revenue would be estimated at ~~\$37,000~~ \$41,000 while payroll tax would be \$45,400 per year.

Comment 6: Specific Comments. *For the following comments, the pagination noted is first for the number on the bottom of the EIS page, and then in parentheses for the page number of the pdf.*

Page iv (25): EIS states that "Until that reservation is physically claimed, however, the water will remain available for use by the lessee under the Water Lease." Similarly:

Page 2-2 (63): EIS states that "Until that reservation is physically claimed, however, it will be available for use by the lessee."

- *DHHL believes that this language is presumptive and may not be accurate, as no water lease has yet to be issued in compliance with HRS 171-58 and the manner in which reservations are actualized has yet to be determined. In addition to any specifications made by the CWRM and BLNR regarding a water lease, a separate agreement between the lessor and the DHHL will be necessary to allow any temporary use of water reserved for DHHL.*

Response 6: We concur that the statements in the Draft EIS claiming that the lessee under the proposed Water Lease would be able to use the water reserved by DHHL under HRS § 171-58(g) until such time that DHHL has an actual need for that water should not have been made. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further concur that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

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With regard to considering the impacts of DHHL physically claiming its reservation, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water) and in that way addresses the possible reduction due to the DHHL reservation. The DHHL reservation was acknowledged in the Draft EIS ("Projections of the amount of government water available from the License Area at Honopou stream after taking into account the CWRM D&O, is approximately 87.95 mgd. This amount would be subject to further reduction in accordance with the DHHL reservation once called upon for use by the DHHL.").

Specific information regarding the DHHL's future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the HHC actions of May 30, 2019 as shown on pages 2-4 to 2-7. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

Within the EIS, the analysis of this reduction in available water for the Water Lease lessee falls under the Reduced Water Volume alternative. Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has subsequently been updated in the Final EIS to include a comparative table in Section 3.5 as shown on pages 3-49 to 3-80.

Comment 7: Page 3-1 (84) 3.1.1 Water Sources Alternatives

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- *DHHL believes that the dismissal of full examination of alternative sources of water, particularly water from lands in central Maui and water derived from lands owned by EMI, Alexander & Baldwin and/or Mahi Pono in East Maui, which are also developed and delivered by the EMI system, is unjustified. Mere assertions that an alternative is not viable does not meet the requirements or intent of HRS 343 which governs the preparation of an EIS.*

Response 7: The Draft EIS included a robust analysis of alternatives to the Proposed Action. Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3. Moreover, based on comments received on the Draft EIS, the alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the Final EIS.

Regarding groundwater resources in Central Maui, the "groundwater alternative" discussed in Section 3.1.1.1 of the EIS, is intended to reduce the amount of surface water required for irrigation to support diversified agriculture in the Central Maui agricultural fields. If a sufficient groundwater source can be developed, then groundwater coupled with the amount of surface water available under the "No Action" alternative or the "Reduce Water Volume" alternative could, conceivably, meet the objectives of the Proposed Action. In this regard, the Draft EIS considered drilling new groundwater wells in Central Maui and East Maui (a total of 53 new wells were considered as a replacement to the water sought through a Water Lease). This analysis has been supplemented in the Final EIS, using the environmental criteria identified therein, to review the possibility of drilling approximately 26 new well sites to supplement, rather than replace, the surface water that could be authorized under the Water Lease.

Mahi Pono has groundwater wells that can supplement surface water to approximately 17,200 acres of the Central Maui agricultural fields at the lower elevations. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water.

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During sugarcane operations, the combined pumping capacity of HC&S's 15 brackish water wells was 228 mgd of brackish water, but the true instantaneous pumping capacity of the wells – the most that could be pumped over 3 to 5 days – was 115 mgd during sugar cultivation, after which sump levels started to decline. From 1986 to 2013, HC&S pumped an average of 71 mgd from the brackish water wells; during the 2008-to-2013 period, these wells delivered about 70 mgd of brackish groundwater to the lower-elevation fields. This was a suitable source of water for sugarcane during droughts because sugarcane can tolerate periodic use of water with higher salinity levels. However, please note that Section 2.1.4 of the Final EIS regarding the description of the brackish groundwater wells that serve the Central Maui Field Irrigation System has been revised to accurately reflect the fact that Mahi Pono only has 10 wells that can provide brackish groundwater to the Central Maui agricultural fields, as shown on page 2-25.

It should be noted that the dynamic relationship between surface and groundwater in the Central Maui agricultural fields affects the amount and quality of groundwater available for Mahi Pono's farm plan. Sections 3.1.1.1 and 4.2.2 of the Draft EIS explain the major role that surface water losses through the Central Maui Field Irrigation System, and, even more significantly, the percolation of applied surface water below the root zone of crops, has on groundwater recharge.

Once percolating surface water enters the groundwater table, however, it is substantially more saline when pumped to the surface for irrigation. As discussed in Section 2.1.4 of the Draft EIS, the crops planned to be cultivated by Mahi Pono are not as salt tolerant compared to sugarcane. In comparison to the former period during sugarcane cultivation, far less surface water will be imported for irrigation and correspondingly less of that water will enter the groundwater table for potential irrigation use. Factoring in the limited salt tolerance of diversified agricultural crops, the use of brackish water on the lower fields is assumed to be limited to about 30% of the water applied. As discussed in Section 4.7.4 of the Draft EIS, combining the upper and lower fields, the overall water split across all 30,000 acres would be approximately 80% surface water and 20% brackish groundwater water. If insufficient water is available from the EMI Aqueduct System, then crop farming will have to be reduced no matter how much brackish water is available.

The Central Maui aquifers have a limited amount of natural groundwater resources due to low rainfall in the area, as discussed in Section 3.1.1.1 of the Draft EIS. The pumping of brackish groundwater from the Central Maui aquifers has been sustained at levels that far exceed the CWRM designated sustainable yield (SY). This has been possible due to aquifer recharge that took place as a result of using East Maui surface water to irrigate the Central Maui agricultural fields. With respect to groundwater pumping in the Central Maui agricultural fields, Section 3.1.1.1 of the Draft EIS explains:

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The average pumping rate from 1987 to 2006 was about 26,663 mg per year. This volume equates to a pumping average of 73 mgd. Brackish groundwater used on the Central Maui agricultural fields during that time was approximately 42.5 mgd. (Plasch, 2019). This average daily pumping rate is well above the Sustainable Yield (SY) of 8 mgd (7 mgd for the Pā‘ia aquifer and 1 mgd for Kahului aquifer), as determined by the CWRM (see detailed discussion in Section 4.2.2). This high pumping rate may have been achievable in the past due to the large amount of recharge that was occurring when sugar was being cultivated and irrigated by surface water. During this same period, irrigation from surface water in Central Maui was approximately 112 mgd, and an additional approximately 44 mgd of surface water was applied to the fields through system losses (evaporation and leakage) within the Central Maui field system. The recharge from these system losses were replenishing the Kahului and Pā‘ia aquifers and is likely the reason that pumping groundwater at rates greater than the SY was achievable.

Hence, high pumping rates in the past were possible as significantly more surface water was being diverted by the EMI Aqueduct System from East Maui to Central Maui and utilized to irrigate the Central Maui agricultural fields overlying the Central Maui aquifers, thereby recharging those aquifers. Under the Proposed Action, it is estimated that approximately 87.95 mgd could be diverted from the License Area after compliance with the CWRM D&O and an additional 4.37 mgd from private lands between Honopou Stream and Māliko Gulch, for a total of 92.32 mgd. However, after surface water distribution to County of Maui Department of Water Supply (MDWS), approximately 85.22 mgd of gross total potential surface water would be available for the Central Maui agricultural fields prior to system losses within the Central Maui Field Irrigation System. This is far less than was diverted and therefore used to irrigate the Central Maui agricultural fields in the past (as discussed above) and therefore less recharge of the Central Maui aquifers is projected to occur. It is anticipated that this will decrease the amount of groundwater that can be pumped from the Central Maui wells.

The Mahi Pono farm plan is a diversified agricultural plan as discussed in Section 2.1.4 of the Draft EIS, which proposes orchards, tropical fruits, row and annual crops, and energy crops. Hence, use of brackish groundwater would be limited. Specifically, Section 2.1.4 of the Draft EIS states:

From 1986 to 2013, A&B pumped an average of 71 mgd from the brackish water wells; during the 2008-to-2013 period, these wells delivered about 70 mgd of brackish groundwater to the lower-elevation fields. This was a suitable source of water for sugarcane during droughts because sugarcane can tolerate periodic use of water with higher salinity levels.

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When the sugarcane fields were in cultivation, well water was being applied typically during dry periods, when surface water was not available for sustained periods. Sugar cane was cultivated in a twenty-four month crop cycle, providing ample time for the crop to recover from a prolonged use of brackish water. The crops planned for Mahi Pono's diversified agricultural operation may have a shorter crop cycle and be much less tolerant than sugar cane of higher salinity levels. Thus, the planned crops will generally be more vulnerable to the negative impacts on crop growth associated with prolonged exposure to brackish water and lower crop yields.

Notwithstanding all of these limitations, the Draft EIS did consider the alternative of drilling additional wells in the Central and East Maui aquifers as an alternative to using surface water pursuant to a Water Lease. Specifically, Section 3.1.1.1 of the Draft EIS states:

To increase groundwater yields, additional wells could be drilled in other aquifers in Central and East Maui. Assuming that a single well is normally allowed to pump about 1 mgd within its area, 53 new well sites would need to be developed, each requiring site acquisition, drilling, testing and if adequate, brought into production. These wells would need to be spaced far enough to avoid salt water intrusion into the aquifer. Each well site would have an estimated development cost of \$6 million. (Akinaka, 2019). To plan, obtain permits for, and construct 53 wells would probably be in the order of \$318 million. Added to this cost would be transmission pipes, additional pumping and related energy consumption to reach higher elevations, and reservoirs. It is anticipated to be very unlikely that 53 new wells could be constructed within the Central and East Maui areas, as the environmental impacts would be considerable and permit approvals would be prohibitive. Therefore, the groundwater alternative is viewed as an unreasonable alternative with greater risks of adverse environmental effects than the Proposed Action, and was dismissed from further review.

For the reasons discussed above and in Section 3.1.1.1 of the Final EIS, this alternative was dismissed from further consideration. However, Section 3.1.1.1 of the Final EIS has been revised to consider further variations of this alternative, as shown on pages 3-3 to 3-9.

The "added storage" alternative discussed in Section 3.1.1.3 of the Draft EIS considered, but ultimately dismissed, the alternative of upgrading existing, but out of service, reservoirs and constructing a large new reservoir. Regulatory, environmental, and safety concerns make these options, which involve major ground disturbance activities, infeasible.

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Ultimately, added storage capacity cannot serve as a substitute for a source of water, but only to assure a more consistent availability of water between periods of surplus and deficit from a source. While reservoir/storage improvements might improve the efficiency of the Central Maui Field Irrigation System, those improvements would be at the cost of providing less recharge to the underlying Central Maui aquifers, which in turn will decrease the amount of brackish well water Mahi Pono can rely on for its irrigation needs. Moreover, the reservoir/storage improvements do not constitute a discrete alternative for providing an additional source of needed water, and instead represent at best a means by which the operational efficiency of the Central Maui Field Irrigation System may be improved. To provide more clarity on this alternative, Section 3.1.1.3 of the Final EIS has been revised to consider further variations of this alternative, as shown on pages 3-11 to 3-14.

Comment 8: *Moreover, the EIS must assist the BLNR in fulfilling its constitutional and statutory duties to protect Public Trust uses of water and traditional and customary practices of Native Hawaiians. The dismissal by assertion that alternate sources of water are not a viable alternative completely fails to provide to BLNR the informational bases necessary for BLNR to make specific findings and provide mitigative conditions as required and explained by the Hawai'i Supreme Court in its Kaua'i Springs (Kauai Springs, Inc. v. Planning Commission of the County of Kaua'i, 133 Hawai'i 141) and Ka Pa'akai (94 Haw. 31) decisions.*

Response 8: We acknowledge that the Proposed Action, which is the issuance of a 30-year Water Lease by BLNR, requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawaii constitutional and statutory provisions that, together with relevant case law, such as *Kauai Springs, Inc v. Planning Comm'n of the Cnty. of Kauai*, 133 Hawai'i 141, 324 P. 3d 951 (2014) ("*Kauai Springs*") and *Ka Pa'akai*, comprise the Public Trust Doctrine.

We note that the *Kauai Springs* decision, in an appeal from action by the Planning Commission of the County of Kaua'i that did not involve any companion proceedings or other consideration by CWRM, held that the requirements the Public Trust Doctrine must be complied with by all political subdivisions of the state irrespective of whether they are statutorily tasked with that responsibility under the State Water Code (HRS Chapter 174C). Here, in contrast, there has been extensive involvement by CWRM in the analysis of the diversion of water from East Maui and an express recognition by BLNR of its role as a Public Trustee. Indeed, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given

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regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

Moreover, as noted at 1.3.4 of the Draft EIS, the CWRM D&O was issued on June 20, 2018 and “establishes a quantity of water that must remain in each stream at specified locations subject to the IIFS Petitions.” In doing so, CWRM noted that it was required by HRS § 174C-71(2)(D), to “weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses.” D&O at COL 20.

Under the current CWRM D&O, CWRM also recited the state’s constitutional obligation to consider the impacts of stream diversions in East Maui on traditional and customary practices of Native Hawaiians at pages 242 through 245, including the Supreme Court of Hawaii’s more recent holding on this subject in *State v. Pratt*, 127 Hawai‘i 206, 277 P. 3d 300 (2012).

In order to facilitate BLNR’s compliance with this obligation, the Draft EIS discussed impacts to identified cultural resources and practices in Section 3.4.10 and in Section 4.6. The Draft EIS also included a CIA at Appendix F. The CIA identified impacts to the regional environment, taro farming, and freshwater resources within the entirety of the License Area based consultation with the community. The information obtained from community consultation prior to the publication of the Draft EIS was based on participants commenting on their knowledge about the License Area. Moreover, as noted in Response # 4, the CIA has been further supplemented based upon additional consultation done in response to comments submitted on the Draft EIS, and is provided as Appendix F of the Final EIS. A summary of the consultation done as part of the CIA is provided in Section 4.6 of the Final EIS as shown on pages 4-158 to 4-159.

The EIS (including Appendix F), together with the CWRM D&O, provide ample information for the BLNR to consider regarding potential impacts to traditional and customary practices and resources, and that information will enable BLNR when considering the Water Lease, to fulfill its constitutional obligation “to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible.” *Ka Pa‘akai* at, 94 Hawai‘i at 35, 7 P. 3d at 1072.

Furthermore, as discussed in Response #7 above, the Draft EIS did explore all reasonable alternatives, including alternative groundwater resources. Based on comments received on the Draft EIS, Sections 3.1.1 and 3.4 of the Final EIS have been supplemented with additional discussion and analyses of alternative and supplemental water sources, as shown on pages 3-2 to 3-19.

Comment 9: *Page 4-116 et. Seq. (229 et. Seq.): Analysis of cultural impacts*

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- *The analysis of potential cultural impacts is inadequate under the Ka Pa'akai decision (94 Haw. 31). In that decision the state Land Use Commission was reversed for determining the level of impacts after a permit was issued and attempting to delegate mitigation to the developer, as is proposed here.*

Response 9: As recited in the CIA, in *Ka Pa'akai*, the Hawai'i Supreme Court held that State and County agencies, when making decisions that may impact cultural, historical, or natural resources or Native Hawaiian traditional and customary practices, must, at a minimum, make specific findings and conclusions on: (1) the identity and scope of valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the [agency] to reasonably protect native Hawaiian rights if they are found to exist. Your comment, by the reference to *Ka Pa'akai*, suggests that you believe that the level of impacts will be determined after issuance of the Water Lease, and that mitigation measures to protect cultural resources will be determined solely by the Water Lease lessee. This is not accurate. As discussed below and in Section 4.6 and Appendix F of the Final EIS, the CIA prepared for this EIS identifies the valued cultural resources and practices in the License Area, the extent to which those resources and practices will be impacted by the Proposed Action, and recommends mitigation measures related to any anticipated impacts.

As discussed in Response #4 above, the CIA prepared by CSH is included as Appendix F to the Draft EIS, identified several practices related to the License Area. The CIA identified the following traditional and customary cultural practices associated with natural and cultural resources which are presented in Section 4.6 of the Draft EIS:

- 1) *Foraging, traditional, and generational gathering of freshwater species for personal consumption. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graiosa).*
- 2) *Foraging, traditional, and generational gathering of plants that may be in or adjacent to tributaries for personal consumption. These species include but are not limited to pohole (native fiddlehead fern) and watercress.*
- 3) *Traditional and generational gathering of introduced plants that can be cultivated or foraged. These species include but are not limited to (young taro tops), guava, 'uala (sweet potato), 'awapuhi (wild ginger), tī, oranges, hāhā, avocado, puakenikenī (ornamental, flowers used for lei),*

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and medicinal plants for lā‘au lapa‘au (curing medicine).

- 4) *Traditional and generational gathering of plants that can only be foraged. This includes but is not limited to pepeiao, various types of ferns (ornamental), and hau (beach hibiscus; Hibiscus tiliaceus).*
- 5) *Traditional and generational gathering of rocks that are used for traditional food preparation. These activities include but are not limited to imu (underground oven) and the production of stone tools for traditional food preparation (i.e., pōhaku ku‘i ‘ai).*
- 6) *Traditional and generational fishing and gathering methods utilized for the shoreline and offshore. Species gathered include but are not limited to limu (seaweed), ‘opihi (limpets), lobster, enenue, kole, ulua, moi, aholehole, ‘anae, kumu, tako, moanakali, ‘ōmilu, ‘ū‘ū/menpachi (soldierfish; Holocentridae), ‘āweoweo (Bulleye; eki), pāpio, pa‘ananu, ‘ō‘io, uhu, lae, kala, black crab, hā‘uke‘uke, and kūpipi.*

Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in Section 4.6 of the Final EIS, which has been updated to include the information obtained in the additional consultation as shown on the pages 4-158 to 4-159. The CIA, and Section 4.6 of the Final EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action as shown on pages 4-239 to 4-252. Section 4.6 of the Final EIS also includes three tables which identify cultural practices in the License Area via: (1) approved interviews and the declarations submitted in the petitions to amend the Interim Instream Flow Standards (IIFS) proceedings before the CWRM that resulted in the CWRM D&O (Table 4-13); (2) declarations submitted in the IIFS proceedings (anonymous tally) (Table 4-14); and (3) approved interviews and the declarations organized by stream (Table 4-15).

It is also noted that following receipt of the Draft EIS comments, CSH invited Chairperson Aila to participate and engage in consultation, as summarized in Section 5.4 of the CIA (Appendix F). However, Chairperson Aila did not respond to CSH's requests.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and those mitigation measures within other technical studies.

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CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of optical encoders with float tape and data loggers within the EMI Aqueduct System; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures. Section 4.6 of the Final EIS has been updated to include the recommendations by CSH, as shown on pages 4-239 to 4-252 .

Comment 10: *DHHL also believes the analysis is inadequate under HRS Ch. 343, as it does not examine any way in which mitigation of impacts on traditional and customary practices could be accomplished through either lowering diversion amounts and/or modification of diversion structures that could decrease impacts on biocultural resources.*

Response 10: Regarding your comment about the analysis of the EIS being inadequate under the content requirements of Chapter 343, HRS, the Draft EIS included a "Content Checklist" identifying each element under HAR § 11-200-17 and where within the text of the Draft EIS information on each particular element could be found. Please note that the Content Checklist has been updated based on updated discussions and additions added to the Final EIS subsequently after the front cover.

We disagree with the assertion that the Draft EIS is inadequate without examining *“any way in which mitigation of impacts on traditional and customary practices could be accomplished through either lowering diversion amounts and/or modification of diversion structures that could decrease impacts on biocultural resources.”* Chapter 4 of the Draft EIS (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields, including a description of the existing environment. Furthermore, the analyses are not limited to the streams subject to the CWRM D&O but rather include all streams within the License Area that were historically or will be diverted under the Proposed Action by

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the EMI Aqueduct System. That analysis considered conditions, impacts, and mitigations under numerous measurements. The Draft EIS also included and relied upon nine technical studies (Appendix A, Assessment of The Environmental Impacts of Stream Diversions on 33 East Maui Streams Using the HSHEP Model); Appendix B, East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry; Appendix C, Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease; Appendix D, Historical Structure Assessment East Maui Aqueduct System; Appendix E, Archaeological Literature Review and Field Inspection for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas; Appendix F, Cultural Impact Assessment for the Nāhiku, Ke‘anae, Honomanū and Huelo License Areas; Appendix G, A&B Proposed Water Lease for the Nāhiku, Ke‘anae, Huelo, and Honomanū Social Impact Assessment (SIA); Appendix H, Economic and Fiscal Impact Study Proposed Water Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Area; and Appendix I, East Maui Water Lease: Agricultural and Related Economic Impacts). We acknowledge, pursuant to HAR § 11-200-17(m), an EIS must consider "mitigation measures proposed to avoid, minimize, rectify, or reduce impact[.]" A brief summary of anticipated impacts and recommended mitigations measures is provided below with references made to the more detailed sections of the EIS that fully address these matters.

Regarding stream habitats, Section 4.2.1 of the Final EIS has been updated to include a discussion of general mitigation measures as shown on pages 4-61 to 4-67.

Contrary to your comment, the Draft EIS does discuss lowering diversion amounts. As discussed in Section 2.1 of the EIS, up until 1986, when the first return of water was made to the East Maui Streams, the long-term average delivery by the EMI Aqueduct System was approximately 165 mgd (CWRM D&O, FOF 519) before any use of water by the MDWS or HC&S. As discussed in Response #7 above, under the Proposed Action, it is estimated that approximately 87.95 mgd could be diverted from the License Area after compliance with the CWRM D&O and an additional 4.37 mgd from private lands between Honopou Stream and Māliko Gulch, for a total of 92.32 mgd. However, after surface water distribution to MDWS, approximately 85.22 mgd of gross total potential surface water would be available for the Central Maui agricultural fields prior to system losses within the Central Maui Field Irrigation System. This is far less than was diverted when sugar was in operation.

Furthermore, Section 3.2.1 of the Draft EIS includes an analysis of a Water Lease being issued authorizing less than the maximum allowed under the CWRM D&O, the Reduced Water Volume Alternative, including quantifying the effects based upon each 1 mgd reduction in water.

Field surveys and habitat modeling for the Proposed Action were conducted by Trutta Environmental Solutions, Inc. (Parham 2019). Native species habitat that were evaluated as part

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of the study included ‘O‘opu nākea (freshwater fish family Gobiidae), ‘O‘opu alamo‘o (freshwater fish family Gobiidae), ‘O‘opu naniha (freshwater fish family Gobiidae), ‘O‘opu nōpili (freshwater fish family Gobiidae), ‘O‘opu akupa (freshwater fish family Eleotridae), ‘Ōpae kala‘ole (freshwater shrimp), ‘Ōpae ‘oeha‘a (freshwater prawn), and Hīhīwai (freshwater snail). The IIFS requirements under the CWRM D&O have resulted in the restoration of significant amounts of flowing stream habitat. As noted in the HSHEP report, "Overall, the analysis resulting from the combination of field surveys and habitat modeling supports the flow restoration under the CWRM D&O 2018 IIFS in improving habitat conditions for native amphidromous stream animals." Please note that the HSHEP model focuses on changes in instream habitat, entrainment, or barriers to passage for these migratory native stream species with respect to modifications of the stream environment. In the case of the East Maui streams covered by the Draft EIS, the primary impact is streamflow diversion. While the HSHEP model does account for changes in habitat with respect to instream structures, these are minuscule in comparison to the loss of habitat in dewatered stream segments and the entrainment of animals into the EMI Aqueduct System. Thus, the primary mitigation measure is flow restoration (the greater percentages of total streamflow diverted generally resulted in lower amounts of instream habitat for native stream species). The HSHEP modeling intent was to quantify the flow restoration effect on the native stream species. Thus, the results of the HSHEP model document mitigation measures to restore native stream life to various restoration targets. Appendix A to the EIS also recognizes other potential mitigation factors, such as engineering changes to increase fish passage and decrease larval entrainment, diversion locations, and the number of diversions.

Regarding your comment that the EIS does not discuss modification of diversion structures that could decrease impacts on biocultural resources, as discussed in Appendix A and summarized in EIS Section 4.2.1, which has been updated as shown on pages 4-63 to 4-67, given the 250+ diversions within the EMI Aqueduct System, incremental changes to each aspect of diversion amount on habitat, entrainment, and passage for each diversion individually and all diversion combinations would result in too many model results for rational use (the number of possible combinations with just one change at each diversion is far over a billion different results, 2^{250-1} = combinations). Therefore, the HSHEP model discusses general guiding concepts associated with flow modification and changes to diversion design to minimize barriers to passage and larval entrainment:

With respect to diversion location:

- When comparing the location of a diversion, diverting comparable amounts of water at higher elevation diversions was less damaging to instream habitat for native stream species than diverting that water at lower elevation diversions.

With respect to a single diversion in comparison to multiple diversions:

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- A single diversion at the upstream most diversion location capturing X amount of stream flow will result in more instream habitat than multiple stream diversions throughout the stream diverting the same amount of stream flow in total (sum of multiple diversions = X). The lower amount of total habitat under the partial water diversion at multiple diversions was the result of compounding impact on entrainment/passage barriers at each diversion.

With respect to modifications of the diversion for improved passage and decreased entrainment:

- Improvements in diversion passage resulted in more suitable habitat at most flow levels.
- At lower flow restoration amounts, modifications to improve passage resulted in greater gains in suitable habitat than at higher flow restoration level.

As discussed in Section 4.2 and Appendix A of the EIS, it was not possible to model every scenario and determine the “optimal” solution within the complex EMI Aqueduct System and thus the above are guiding concepts which may allow more specific actions to be determined as broader flow modification quantities are determined.

It is also important to note that diversions closer to the stream mouth have more of an impact on habitat units (HU) than those farther back from the stream mouth. Also, some diversion designs can entrain larvae or block passage more than other designs, and the amount of water passing the diversion structure is also important to consider when quantifying impacts on HU. However, as long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. This is discussed in more detail in Section 4.2.1 of the EIS, as shown pages 4-63 to 4-67.

The CIA, updated in the Final EIS to reflect a second round of consultation with those who provide comments on the Draft EIS and raised specific issues related to potential impacts on traditional or cultural practices and resources, and, as discussed in Response #4 above, does propose mitigation measures should the proposed Water Lease be issued. CSH recommends mitigative measures to address taro farming impacts, freshwater ecosystem impacts, cultural sites, and access related to the Proposed Action. These mitigation measures are described in more detail in Section 4.6 of the EIS as shown on pages 4-239 to 4-252.

In addition to the recommendations provided by the other technical studies conducted as part of the EIS (discussed below), CSH recommends that the Proposed Action include monitoring and public reporting of stream flow volumes. At present, EMI maintains a system of optical

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encoders with float tape and data loggers within the EMI Aqueduct System. The information obtained is reported to CWRM on a monthly basis. CSH recommends that this system is maintained and upgraded as needed in order to report accurate information on stream flow and diversion amounts to the community.

The terrestrial flora and fauna study prepared by SWCA Environmental Consultants (2019) as part of the EIS has determined that the Proposed Action, specifically the diversion of water within the existing EMI Aqueduct System, will have no impact on terrestrial flora and fauna resources, nor will the Proposed action increase habitat fragmentation over current conditions subject to avoidance and minimization measures.

As summarized in Section 4.4.1 of the EIS, the terrestrial flora and fauna study recommended the following avoidance and minimization measures to address impacts to flora (SWCA Environmental Consultants 2019:24):

- A botanical monitor should be on-site during any maintenance activities on cliffsides, near waterfalls, and in other native species-dominated areas to ensure that no listed or candidate species are impacted.
- To avoid the unintentional introduction or transport of new invasive species into more pristine portions of the License Area during aqueduct maintenance activities, all equipment and vehicles arriving from outside the License Area should be power washed and inspected prior to any maintenance activities and any time equipment is relocated on cliffsides, near waterfalls, and in other native species-dominated areas in the License Area.
- Construction material arriving from outside Maui should also be washed and/or visually inspected (as appropriate) for excessive debris, plant materials, and invasive or harmful non-native species (plants amphibians, reptiles, and insects).
- When possible, any raw material used in maintenance activities should be purchased from a local supplier on Maui to avoid introducing non-native species not present on the island.
- Inspection and cleaning activities should be conducted at a designated location. The inspector must be a qualified botanist/entomologist able to identify invasive species that are of concern relevant to the point of origin of the equipment, vehicle, or material.

As discussed in Section 4.4.2 of the EIS, the terrestrial flora and fauna study recommended the following avoidance and minimization measures to address impacts to fauna (SWCA Environmental Consultants 2019:24-25):

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- Regular on-site staff should be trained to identify special-status species with the potential to occur on-site and should know the appropriate measure to be taken if they are present.
- If tree trimming occurs in the *'i'iwi*, Maui parrotbill and crested honeycreeper range (as defined by SWCA Section 5.2.5) from November to June, a qualified biologist should survey the trees for active nests of these species.
- If a downed tree must be removed from a road, trail, or other passageway, it will be inspected for the presence of active bird nests, specifically the nest of an MBTA-protected species, that may have been present prior to the tree falling. If an active nest is found, it should be protected in place until the chicks fledge.
- If a Hawaiian goose, Hawaiian stilt, or Hawaiian coot is observed in the area during construction activities, all activities within 100 ft (30 m) of the species should cease, and work should not continue until the species leaves the area on its own accord.
- If a Hawaiian goose nest is discovered, all activities within 150 ft (46 m) of the nest should cease, and the USFWS should be contacted. Work should not resume until directed by the USFWS.
- If felling of standing trees occurs during the bat breeding season, direct impacts could occur to juvenile bats that are too small to fly but too large to be carried by a parent. To minimize this impact, no trees taller than 15 ft (4.6 m) should be trimmed or removed between June 1 and September 15.
- The use of barbless top-strand wire is recommended for all fence construction to avoid entanglement of Hawaiian hoary bat.
- A qualified biologist should work closely with the USFWS and monitor ESA-listed damselflies to ensure activities do not have a negative impact.

The terrestrial flora and fauna study recommended the following avoidance and minimization measures to address impacts to seabirds (SWCA Environmental Consultants 2019:25):

- Construction activity should be restricted to daylight hours as much as practicable during the seabird peak fallout period (September 15 to December 15) to avoid the use of nighttime lighting that could attract seabirds.
- All outdoor lights should be shielded to prevent upward radiation. This has been shown to reduce the potential for seabird attraction. A selection of acceptable, seabird-friendly lights can be found online at the Kauai Seabird Habitat Conservation Program website: <http://www.kauai-seabirdhcp.info/lighting-homes-businesses/>.
- Outside lights not needed for security and safety should be turned off from dusk through dawn during the fledgling fallout period (September 15 to December 15).

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The terrestrial flora and fauna study has recommended the following avoidance and minimization measures to address impacts to the Blackburn's Sphinx Moth (SWCA Environmental Consultants 2019:37):

- A biologist familiar with the species should survey areas of proposed activities for Blackburn's sphinx moth and its larval host plants prior to work initiation. Surveys should be conducted during the wettest portion of the year (usually November–April or several weeks after a significant rain) and within 4 to 6 weeks prior to construction. Surveys should include searches for eggs, larvae, and signs of larval feeding (chewed stems, frass, or leaf damage). If moths or the native aiea (*Nothocestrum* spp.) or tree tobacco over 3 feet tall are found during the survey, USFWS should be contacted for additional guidance to avoid take.
- If no Blackburn's sphinx moth, aiea, or tree tobacco are found during surveys, measures should be taken to avoid attraction of Blackburn's sphinx moth to the project location to prohibit tree tobacco from entering the site. Tree tobacco can grow greater than 3 feet tall in approximately 6 weeks. If it grows over 3 feet, the plants may become a host plant for Blackburn's sphinx moth. Therefore, any tree tobacco less than 3 feet tall should be removed. The site should be monitored every 4 to 6 weeks for new tree tobacco growth before, during, and after the proposed ground-disturbing activity. Monitoring for tree tobacco can be completed by any staff, such as groundskeeping or regular maintenance crew, provided with picture placards of tree tobacco at different life stages.

The SIA prepared by Earthplan as part of the EIS has recommended the establishment of “Core Working Group” comprised of geographic communities, environmental, agriculture, and business interests, and public agencies. The group would serve as a forum for exchanging ideas and collaborative efforts, as well as provide feedback and suggestions to Mahi Pono. Each member of the Core Working Group would be expected to reach out to their own networks to extend the discussion beyond the Core Working Group. While there would likely be strong differences in perspectives and opinions, the Core Working Group would need to find ways to establish core principles, common ground and manageable solutions.

As discussed in Section 6.2.2 of the SIA also recognizes that East Maui residents have a unique relationship with the Proposed Action. While impacts are first and foremost culture-related, they are also entrenched in a social context that is the basis for this mitigation recommendation. The social impact of diverting water is generational, one that has affected livelihoods, family cohesion, the ability to integrate with environment for food gathering and recreation, resource stewardship, and personal connections or disconnections with values inherent in their lifestyles.

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For the Ke‘anae – Wailuānuī community to move past historical impacts, the SIA recommends that there needs to be established a point of departure. Mitigation needs to go beyond the physical restoration of streams. It needs to address the social context and include apology and reconciliation. This needs to be done within a cultural foundation that binds the community together, and key players, including Mahi Pono, public agencies and elected officials. The manner and forum for this process should be defined by cultural leaders integral with the process.

As discussed in Section 4.5 of the EIS, Mason Architects recommends documentation of the sluice gates with photos and location sketch plans conforming to the Historic American Engineering Survey (HAER) standards where sluice gates are to be removed or altered is proposed. Many of the sluice gates are unique to a particular stream, and documentation will ensure that nothing is lost over time. Section 4.5 of the Final EIS as well as Appendix E (Archaeological Literature Review and Field Inspection) have been revised to include the current inventory of roads and trails in the License Area as shown on pages 4-147 to 4-148. CSH completed a geographic analysis of trails and roads that appear within the License Area as depicted on maps between 1869 and 1992 and available to the public domain. The majority of roads and trails within the License Area are associated with access to the EMI Aqueduct System and these road and “ditch trails” are likely contemporary with the construction of the EMI Aqueduct System.

Figure 4-39 has been added to the Final EIS at page 4-149 to correspond with the above text (Figure 48 in Appendix E).

Comment 11: *Page V (26): "The Water Lease would allow the use of government-owned waters from the License Area through the EMI Aqueduct System."*

- *This statement is legally incorrect as there is no private property in water in Hawai‘i, and hence no "government-owned" waters or "privately-owned" waters." All waters are controlled by the state for the benefit of its people. See McBryde Sugar Co. v. Robinson, 54 Haw. 174*

Response 11: We concur that the nomenclature “government-owned waters” may be an antiquated term. The intent of the sentence was to refer to water arising on government-owned lands which the BLNR can lease the right to collect pursuant to HRS § 171-58(c).

We note, as discussed in Section 3.3 (No Action) of the Draft EIS, should no Water Lease be issued to EMI, EMI would continue to have access to approximately 30% of the water from the License Area. Under a 1938 Agreement between the Territory of Hawai‘i (now the state) and EMI, EMI was given a perpetual right and easement to convey water through those portions of

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the EMI Aqueduct System located within State lands, and to divert the water so conveyed through the EMI Aqueduct System, and EMI granted the Territory a similar perpetual right and easement. This agreement is still in place and valid irrespective of the issuance of any Water Lease. Under the 1938 agreement and a related calculation involving isohyet analysis of rainfall patterns, it is understood that approximately 30% of the water in the License Area arises on lands that are privately owned. As such, in the absence of a water lease or water license, EMI would be entitled to divert approximately 30% of the waters in the License Area, and continue to make use of the minimal diversions located purely on private lands, for a total of approximately 30.76 mgd of water, which would provide approximately 24 mgd for actual irrigation purposes in the Central Maui agricultural fields (i.e., after taking into account system losses within the Central Maui field irrigation system). Please note that Section 3.3 of the Final EIS has been updated as shown on pages 3-24 to 3-25 to expand on the above discussion based on comments received on the Draft EIS.

Comment 12: *Page 5-1 et. Seq (313 et. seq.) Section 5.0 Relationships to Plans, Policies & Controls.*

- *The Draft EIS identifies DHHL's water reservations and planning system in section 2.1.1. However, consistency DHHL's General Plan, Water Policy Plan, Maui Island Plan, Regional Plan and Development Plans must be assessed and included in section 5.*

Response 12: Please note that we respectfully disagree with your comment that the Proposed Action's consistency must be assessed against the above plans. According to HAR § 11-200-16(h): an EIS must include a statement of the relationship of the proposed action to land use plans, policies, and controls for the affected area. Discussion of how the proposed action may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the statement shall describe the extent to which the agency or applicant has reconciled its proposed action with the plan, policy, or control, and the reasons why the agency or applicant has decided to proceed, notwithstanding the absence of full reconciliation. Chapter 5, titled "Relationship to Land Use Plans, Policies, and Controls" provides the analysis of the Proposed Water Lease and related land use plans, policies, and controls. Please note that the Water Lease will include a reservation of water for the DHHL. Non-potable water needs for the DHHL's lands in Ke'anae-Wailuānuui amount to 6,868,000 gpd. Although the DHHL holds a reservation for 3,000 gpd of potable water for this area for development over the next 20 years, another 7,000 gpd of potable water may be required for longer-term development. Thus, a potential reservation for this area amounts to 6,875,000 gpd. For its agricultural and residential lots in Keokea-Waiohuli, the DHHL has already secured a potable water reservation from the CWRM. Non-potable water demand amounts to 10,428,000 gpd for which a water reservation

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would have to be secured. The DHHL's current plans for its Pulehunui lands in Central Maui include agricultural, commercial, industrial and civic uses. A reservation of 1,734,000 gpd of ground water has already been secured from the CWRM. A non-potable water demand of 1,027,510 gpd has been identified, and water delivered through the EMI Aqueduct System has been identified as a potential source of this water. However, the Proposed Action does not entail direct use or direct impact to any DHHL planning areas.

Comment 13: *The proposed project has the potential to impact DHHL's Maui land holdings and beneficiaries. We highly encourage you to consult with Hawaiian Homestead community associations and other (N)ative Hawaiian organizations to better assess potential impacts to cultural and natural resources, access and other rights of Native Hawaiians. A list of some of our DHHL homestead associations may be found at <https://dhhl.hawaii.gov/homestead-associations/>.*

Response 13: As described in Section 4.6 of the Draft EIS, in preparing the CIA:

CSH's consultation efforts utilized previous contact lists, in-house database of kūpuna (elders), kama'āina (native born), cultural practitioners, lineal and cultural descendants, Native Hawaiian Organizations (NHO; includes Hawaiian Civic Clubs and those listed on the Department of Interior's NHO list), and community groups. CSH also contacted agencies such as SHPD, OHA, and the appropriate Island Burial Council regarding the License Area located for their response to identify lineal and cultural descendants, individuals, and or NHO with cultural expertise and or knowledge of the License Area.

As discussed in Section 4.6 of the EIS, the Hawaiian Homestead community associations and other Native Hawaiian organizations were contacted prior to and subsequent to the publication of the Draft EIS. CSH contacted 136 parties as shown in Table 12 of the CIA, including the DHHL beneficiaries, NHOs such as Aha Moku o Maui, Inc., Kuloloia Lineage-I Ke Kai o Kulolia, Waiehu Kou Phase 3 Association and knowledgeable community members. NHOs consulted included: Aha Moku o Maui, Inc. (Ke'eumoku Kapu and Kyle Nakanelua); Kuloloi'a Lineage – I Ke Kai o Kuloloi'a (Les Kuloloi'a); Waiehu Kou Phase 3 Association (Roy Oliveira); Moku o Kaupō (Jade Alohalani Smith); and Aha Moku o Kahikinui (Donna Sterling).

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



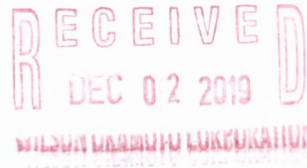
PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

November 25, 2019

Mr. Earl Matsukawa, AICP
Vice-President, Director of Planning
Wilson Okamoto Corporation
1907 S. Beretania St., Suite 400
Honolulu, HI 96826



RE: Notice of Availability
Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū
And Huelo License Areas

Dear Mr. Matsukawa:

Thank you for the opportunity to provide comments for the proposed water lease.

We have no comment at this time. However, we reserve the right to comment in the event of any changes.

Please keep us informed of any updates or changes in the future.

Sincerely,

Brian Kau, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

cc: Mr. Ian Hirokawa
Land Division, DLNR





WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES
2019 SEP 26 AM 10:10

10238-02
September 23, 2019

Ms. Phyllis Shimabukuro-Geiser
Office of the Chairperson
State of Hawaii
Department of Agriculture
1428 S. King St.
Honolulu, HI, 96814

Subject: Notice of Availability
Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū
and Huelo License Areas

Dear Ms. Shimabukuro-Geiser:

Notice of the availability of the Draft Environmental Impact Statement (DEIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas will be published in the September 23, 2019 issue of the Office of Environmental Quality Control's *The Environmental Notice*. Written comments received in response to this DEIS will be considered in the preparation of the Final EIS (FEIS). The deadline for comments is November 7, 2019. Please address comments to:

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 S, Beretania St., Suite 400
Honolulu, HI 96826

with a cc to:

Mr. Ian Hirokawa
Land Division, DLNR
1151 Punchbowl St. Room 220
Honolulu, HI 96813

Or, via email to: waterleaseeis@wilsonokamoto.com and ian.c.hirokawa@hawaii.gov

All comment letters must be post-marked, or email received, by the deadline date to be included in the Final EIS.

The DEIS is available for review on the OEQC Website at the following URL address:

http://oeqc2.doh.hawaii.gov/The_Environmental_Notice/2019-09-23-TEN.pdf

We appreciate your interest in this environmental review process.

Sincerely,

Earl Matsukawa, AICP
Vice President, Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant



10238-04
September 3, 2021

Mr. Brian Kau, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division
Department of Agriculture
State of Hawai‘i
1428 S. King Street
Honolulu, HI 96814

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Kau:

Thank you for comments dated November 25, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *We have no comment at this time. However, we reserve the right to comment in the event of any changes.*

Response 1: We acknowledge that the State of Hawai‘i Department of Agriculture does not have any comments at this time.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

10238-04

Letter to Mr. Brian Kau, P.E.

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September 3, 2021

Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Kamakana Ferreira <kamakanaf@oha.org>
Sent: Thursday, November 7, 2019 3:32 PM
To: Public Comment
Subject: Comments on AB/EMI DEIS Water Lease
Attachments: Letter 11.06.19 Matsukawa of Wilson Okamoto RE DEIS for the Nahiku Keanae Honomanu and Huelo Areas HRD19-8044C.PDF

Aloha Earl,

Please see the attached PDF copy of the Office of Hawaiian Affairs comments on the A&B/EMI DEIS water lease. The hardcopy was mailed out today. Please let me know if you have any questions.

Mahalo,

Kamakana C. Ferreira, M.A.

Lead Compliance Specialist
Office of Hawaiian Affairs
560 N. Nimitz Hwy
Honolulu, Hi. 96817

(808)594-0227

PHONE (808) 594-1888

FAX (808) 594-1938



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
 560 N. NIMITZ HWY., SUITE 200
 HONOLULU, HAWAII 96817

HRD19-8044C

November 6, 2019

Earl Matsukawa
 Vice President, Director of Planning
 Wilson Okamoto Corporation
 1907 S. Beretania Street, Suite 400
 Honolulu, Hawaii'i 96826

Re: Draft Environmental Impact Statement
 Proposed Water Lease for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas
 Multiple Ahupua'a, Hāna and Makawao Moku, Maui Moku
 Tax Map Key: (2) 1-1-001:044, 50; 1-1-002:002; 1-2-004:005, 007 (por.); 2-9-014:001, 005,
 011, 012, 017

Aloha e Mr. Matsukawa:

The Office of Hawaiian Affairs (OHA) is in receipt of your September 23, 2019 letter notifying us of the Alexander & Baldwin, Inc., and East Maui Irrigation Company, Ltd. (A&B/EMI) Draft Environmental Impact Statement (DEIS) in support of a proposed water lease for Nāhiku, Ke'anae, Honomanū, and Huelo License Areas in Hāna and Makawao, Maui (License Area). Wilson Okamoto Corporation has been contracted by A&B/EMI to complete this DEIS in accordance with Hawai'i Revised Statutes (HRS) Chapter 343 and Hawai'i Administrative Rules (HAR) Chapter 11-200. OHA understands that pursuant to HRS 171-58, A&B/EMI will still have to acquire the water lease via public auction and also develop a watershed management plan in collaboration with the State of Hawai'i Department of Land and Natural Resources (DLNR) as these waters originate on and traverse State lands.

The sought water lease would be a long-term, 30-year lease from the DLNR and Board of Land and Natural Resources (BLNR), for the diversion, transport, and use of government owned public trust waters in the License Area via the existing EMI Aqueduct System. Currently, it's expected that 65.88 million gallons per day (mgd) of water will be utilized from surface water sources, while 16.47 mgd will be utilized from ground water sources. The BLNR cannot approve any water lease without completion of an applicable environmental review pursuant to HRS Chapter 343. The DEIS states that the water lease will further enable A&B/EMI to access State-owned lands for the purposes of maintaining and repairing existing access roads and trails for the EMI Aqueduct System. The EMI Aqueduct System, which has been in use for generations, has been designed and used to convey stream waters from East Maui to over 30,000 acres of land for domestic and

Mr. Earl Matsukawa
November 6, 2019
Page 2

commercial agricultural purposes in portions of Upcountry, East, and Central Maui. Although the water lease was originally obtained by A&B in 1876 to facilitate sugarcane production, A&B has since ceased its sugarcane activities and recently divested itself of its landholdings in the serviced areas. Current landowners, like farming company Mahi Pono, utilize water for diversified (commercial) agricultural purposes. Mahi Pono has developed a Farm Plan for these properties that drives some of the water use decisions within the DEIS. Some of this water is also provided to the County of Maui Department of Water Supply (MDWS) for municipal uses.

While OHA has endeavored to provide as comprehensive review of the DEIS as practicable within the time allotted, OHA notes that requests for a time extension of the public review period from numerous stakeholders, including Maui county officials and OHA staff, were not accommodated. Accordingly, OHA makes no representation that the comments below are an exhaustive and complete review of all potential issues and concerns with this 2,700 page document; the comments provided nevertheless highlight representative areas of particularly salient concern. OHA looks forward to reviewing a revised DEIS that reflects a good faith effort to address the categorical concerns raised in this letter, and by other stakeholders representing Native Hawaiian interests and concerns.

OHA offers the following comments regarding the DEIS' (1) alternative actions analyses, (2) cultural impacts analysis, and (3) HRS 6E (historic preservation) compliance:

1. The analyses and rejection of alternatives are inconsistent, incomplete, and insufficiently detailed

OHA previously commented on the Environmental Impact Statement Preparation Notice (EISPN) for the subject DEIS and water lease in April 2017, recommending that alternatives to the proposed water lease action (inclusive of shorter lease terms and the no-action alternative of discontinuing water diversions entirely) be considered as HAR § 11-200-17(f) requires a comparative analysis of such alternatives. Per the rules, the comparative analysis "shall describe . . . alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected," with a "rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks" (emphases added).

In the spirit of the law and rules, alternatives are not to be evaluated with a myopic focus on the alternatives' potential adverse effects on the applicant's profits. While OHA appreciates the inclusion of an alternatives analysis that generally considers the approaches OHA previously suggested, OHA believes the: (1A) dismissed alternatives rely on unrealistic or extreme demands that deprives them of their eligibility for comparative analysis; and, (1B) "reasonable" alternatives are poorly explored without sufficient justification for their rejection, thus improperly favoring the preferred alternative.

Mr. Earl Matsukawa
November 6, 2019
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1A. Dismissed alternatives rely on unrealistic or extreme demands

Section 3.1 of the DEIS lists two “dismissed” alternatives that OHA is particularly concerned with having unrealistic demands: groundwater use and added storage capacity. These alternatives were eliminated from a detailed comparative analysis as they were considered impractical (i.e., drilling multiple new wells, installing pumps, building storage tank capacity). To quote the DEIS, it states that these dismissed alternatives “are not considered viable for various reasons including the expected intensification of environmental effects and lack of feasibility.”¹ Their subsequent summary dismissals unreasonably foreclose any meaningful exploration of how the “alternative” approaches may in fact be used to mitigate adverse environmental effects and achieve perhaps a more appropriate/reasonable balance between the agricultural development of Central Maui and the protection of East Maui’s environment.

For example, the dismissed groundwater alternative is described as potentially reducing the amount of East Maui surface water required for irrigation in Central Maui, but seems to actually eliminate and essentially replace all surface water demands. The DEIS speculates that since current aquifers (Pā‘ia and Kahului) can’t support more than 4 mgd due to reductions in aquifer recharge rates, additional wells would need to be drilled in other aquifers in order for this method to effectively contribute to water needs. The DEIS, however, appears to use this speculative “safe pumping rate” as a means to propose that “53 new well sites would need to be developed” with pumping capacity of 1 mgd each. Hydrological speculation aside, the total amount of water produced from these 53 wells would be about 80% of the expected 65.88 mgd surface water draw and more than three times the expected 16.47 mgd draw on ground water under the proposed water lease. The DEIS then cites that costs, property acquisitions, and environmental impacts from these 53 wells would make the alternative unfeasible. There is no clear explanation for why such an arbitrary large number of wells is needed to “reduce” the amount of East Maui surface water to meet the objectives of the proposed action. By unreasonably recharacterizing this alternative as one that would essentially replace, rather than moderately reduce East Maui surface waters with Central Maui groundwater sources, the DEIS avoids any detailed analysis of a less extreme increased groundwater alternative that might strike a better balance between the environmental, cultural, and other public trust purposes of East Maui’s streams with the agricultural needs of Central Maui. OHA thus recommends that the DEIS explore less extreme options of this alternative that are more balanced.

Similarly, the dismissal of the “added storage capacity” alternative is based upon an assertion that upgrading all of Central Maui’s 48 existing major reservoirs or constructing a large reservoir to store a commensurate level of water are the only scenarios. Not surprisingly, such a huge endeavor would cost an unfeasible \$50 to \$100 million for upgrades, or \$300 million for a single large reservoir. There is no moderate alternative proposed as the DEIS does not explore any other possibility other than repairing all reservoirs or the construction of a singular large reservoir with a capacity of 1,200 mg. Furthermore, there is no explanation behind the apparent assumption that this alternative requires all surface water flows to be replaced by stored water for an entire month. With the summary rejection of this “added storage capacity” alternative, the DEIS avoids any detailed consideration or comparative analysis of a less extreme added storage capacity scenario

¹ See DEIS page 3-1, Section 3.1.

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that could reduce the environmental impacts of the proposed alternative on East Maui's streams, while protecting Central Maui farmers with the reliability of additional water stored during periods of high rainfall. As with the ground water alternative, OHA recommends that the DEIS explore less extreme options of this alternative that are more balanced.

1B. The "reasonable" alternatives are poorly explored without sufficient justification for their rejection

The DEIS does offer three "reasonable" alternatives for its "detailed" comparative analyses: shorter water lease durations, reduced water volumes, and a modified water lease area option. Ultimately, although the reasonable alternatives would potentially mitigate adverse impacts resulting from the disruption and diversion of stream flow under the proposed action, OHA believes detailed analyses were not sufficiently provided. The rejection of these alternatives appear based on how agricultural investment returns and financing options in Mahi Pono's current Farm Plan for their East Maui properties may be affected, rather than on an objective and comprehensive consideration of their relative beneficial and adverse environmental effects.

Regarding the financing concerns cited as a basis for rejecting the shorter lease length and reduced water allocation alternative, OHA notes that insufficient detail is shared on how or what exactly will be financed, and more importantly, how a longer-term water lease or larger initial water allocation will somehow alleviate the apparent financing uncertainties to an extent that justifies the rejection of these less impactful alternatives. For example, in light of the fact that a water lease of any length is always subject to the public trust and the State Water Code, the State can and should adjust or amend water allocations consistent with changing conditions and impacts. Other uncertainties, as further described below, may also impact water allocations under a water lease of any length, regardless of what quantities might be initially diverted under a lease. Thus, OHA believes that sufficient clarification and detail regarding financing needs should be included in the DEIS as it is currently one of the reasons used to reject the proffered "reasonable" alternatives.

Regarding the "return on investment" that would be compromised by the shorter lease length alternative, the over-reliance on long-term investment crops also appears to be an unnecessarily rigid application of what is otherwise described as an adaptive and flexible Farm Plan. The use of the Farm Plan as a means to dismiss alternatives seems to contradict the way the Farm Plan is portrayed in the DEIS, which states that the Farm Plan is a "fluid and responsive" plan that responds to the ever-changing agricultural market.² OHA believes a more detailed explanation should be provided that can sufficiently describe the specific costs and benefits of the Farm Plan's multiple contingencies prior to rejecting alternatives.

Notably, the DEIS argues that the long term lease is needed for Mahi Pono to get their return on long term investment crops. The rigid adherence to the Farm Plan's long term investment drivers discounts uncertainties that may counsel a much shorter lease term than contemplated under the proposed action. For example, the DEIS includes reference to an e-mail from Skippy Hau, an aquatic biologist with the State of Hawai'i Division of Aquatic Resources, noting the lack of information on the amount of water diverted from East Maui, and urging a five-year lease "with

² See page 2-17 of the DEIS.

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constant updates” based on water use and other information gathered during that time. As further suggested by Mr. Hau’s e-mail, climate change may also have profound impacts on rainfall patterns, ecosystem dynamics, and the very stability of our ways of life in the near future, potentially requiring adjustments to lease conditions and water allocations consistent with the State Water Code, and the public trust. While the EIS does acknowledge the existence of climate change, it leans towards an overly optimistic take on such impacts and accordingly rejects the shorter lease term alternatives. A rigid adherence to one return on investment scenario and unreasonably dismissive attitude towards uncertainties should not be used to justify the rejection of shorter and more adaptive lease term alternatives that may mitigate or better accommodate uncertain adverse environmental effects. OHA believes that the Farm Plan should include scenarios that do not require or limit the need for long term investment crops. With such a consideration added to the Farm Plan, the DEIS can reassess reasonable alternatives accordingly.

Furthermore, similar to the superficial characterizations of the “dismissed” alternatives, OHA notes that the shorter term water lease alternative is presented broadly and without any exploration of the varying term lengths that could and should be considered under this alternative. For example, the DEIS could develop a tiered approach by exploring and comparing the differences in effect and feasibility of varying, specific lease durations. A shorter-term water lease could be anything less than 30 years. Even if Mr. Hau’s well-reasoned 5-year lease recommendation is considered unfeasible, a 10- or 15- year lease could still be utilized to successfully facilitate Mahi Pono’s Farm Plan while at the same time providing substantially greater opportunity to understand and address changing environmental conditions and effects. However, the consideration of any lease under 30 years is dismissed in the DEIS, as it declines to propose any specific shorter term lease length in favor of lumping all leases less than 30 years in a single, short-term water lease category. Assessing the impact of a shorter-term water lease with specific durations would be more effective in determining how much of a burden these shorter-term water leases really are on Mahi Pono’s Farm Plan, its “return on investment,” or other cited reasons for their generic dismissal. Thus, OHA recommends that multiple short term lease options be examined with each option showing impacts to investment returns within Mahi Pono’s Farm Plan.

2. Impacts to cultural resources and practices are inadequately described with little to no consideration of mitigation efforts beyond complying with the already binding 2018 CWRM D&O

The DEIS argues that available water will be limited due to existing Department of Hawaiian Homelands (DHHL) water entitlements³ and interim instream flow standard (IIFS) restorations ordered by the Commission on Water Resource Management (CWRM) in a 2018 Decision & Order (D&O). According to the DEIS, this 2018 D&O, which restored all or partial natural IIFS to 22 streams in the License Area, has the potential to “reduce or eliminate cultural impacts.” OHA believes such a statement is continually misused throughout the DEIS to (2A) avoid cultural impact considerations for streams not covered by the D&O; and, (2B) ignore concerns regarding cultural access to the License Area.

³ See HRS 171-58(g) which requires the DLNR to consult with DHHL prior to the issuance of a water lease to ensure that the water lease does not take away from the water needs of future homestead needs.

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November 6, 2019
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2A. The DEIS avoids cultural impact considerations for streams not covered by the D&O

Cultural practices and subsistence lifestyles unique to the communities in East Maui have a direct relationship with the health and abundance of native stream and estuarine life, as well as the region's overall environmental integrity. Meanwhile, as recognized in the DEIS and its appendices, even with the D&O in place, the proposed action could reduce available habitat units and result in lost mauka-to-makai connectivity for a substantial number of streams in East Maui not covered by the D&O. These streams are all ecologically interconnected through the amphidromous nature of the native species they support. According to the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) done as part of the DEIS, there is a potential for an 85% loss of habitat in streams not covered by the D&O when water is fully diverted. The proposed action at these streams would have a direct impact on native stream and estuarine life throughout the region that would in turn potentially limit or foreclose the perpetuation of cultural practices, the intergenerational transmission of cultural knowledge, and the maintenance of traditional subsistence lifestyles. The DEIS thus cannot reasonably characterize the D&O as somehow reducing or even eliminating all of the proposed action's cultural impacts. OHA recommends the DEIS provide a more detailed evaluation of the numerous cultural concerns and possible mitigation measures for streams not covered by the D&O.

The HSHEP is arguably also incomplete as it states that it evaluated all streams within the License Area except for one, Puakea Stream. OHA believes the reasoning for its exclusion from HSHEP analysis is not made clear. Absent a valid reason, OHA requests that impacts to culturally significant flora and fauna species at Puakea Stream be assessed, as leaving it out renders the cultural impact portion of the DEIS incomplete.

The HSHEP does further note that entrainment of aquatic larvae at stream diversions remains an issue that contributes to the loss of habitat units for many flora and fauna species dependent on stream flow. Interestingly, the DEIS does acknowledge this point by indicating that habitat units may be increased through the modification of diversions to reduce entrainment. However, the DEIS does not appear to offer such alternatives and again relies on the D&O to reduce or eliminate cultural impacts. OHA thus recommends that alternate diversion designs be considered to reduce entrainment.

On a final note, although OHA certainly does not oppose ethically responsible scientific analyses and understands the important role these studies serve, scientific findings are not always absolute and are often refined through follow up testing, monitoring, or research. In this particular case, the claim that the D&O has the "potential" to reduce or eliminate cultural impacts is not a definite nor are the findings of the HSHEP. As findings note a "potential" and not a guarantee, OHA believes that follow up monitoring on water quality, stream flow, and flora and fauna life should be arranged prior to issuance of a water lease. Such monitoring could perhaps be integrated into the watershed management plan to be collaboratively developed by A&B/EMI and the BLNR pursuant to HRS 171-58(e).

Mr. Earl Matsukawa
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2B. The DEIS ignores concerns regarding cultural access to the License Area

The DEIS lacks any explicit consideration of the proposed action's potential impacts to access by cultural practitioners, who may wish to gather or visit resources and sites in the License Area. There is only a hint of discouragement to unregulated public access to the License Area in the DEIS, where it states that unauthorized personnel could present a potential vector for invasive species and traditional resources could be over consumed.⁴ OHA argues that since traditional customary practices are occurring in the area and that these rights are protected by the State of Hawai'i Constitution, then A&B/EMI should minimally commit to developing a procedure for addressing cultural access and keeping individuals informed of activities occurring in the License Area. This procedure should be in place even if A&B/EMI defers access responsibility to the State. With only 15 of 136 people responding to the cultural impact assessment consultations, with potentially many more who were and are reluctant to participate in the process,⁵ it is likely that many cultural users of the area are not accounted for and that potential access impacts may be much greater than anticipated. Accordingly, the DEIS should consider an array of approaches to mitigate potential impacts to practitioner access and use of the License Area, such as the maintenance of a consultation list of willing practitioners that can be used to communicate with and accommodate these individuals and their networks. Notably, this may help A&B/EMI develop a respectful relationship with cultural practitioners rather than creating an adversarial lessee-versus-cultural practitioner situation. With an established procedure to handle cultural access, A&B/EMI or the State should also consider signage that encourages cultural use pursuant to the State of Hawai'i Constitution, Article XII, as not to have them unduly harassed by any form of onsite security or enforcement personnel. In any case, the DEIS must address what may be significant and unaccounted-for impacts to practitioner access under the proposed action.

3. HRS 6E, Historic Preservation, Compliance

As the State Historic Preservation Division (SHPD) is tasked with administering HRS 6E, SHPD comments were sought when the EISPN was published in 2017. Per the January 25, 2017 SHPD letter provided in Appendix E of the DEIS, SHPD originally could not make a determination of the water lease's impact on historic properties, and thus recommended that an archaeological inventory survey (AIS) be completed in accordance with an AIS plan (AISP). However, following several SHPD consultations with the contractor, SHPD rescinded its request for an AIS in a letter dated October 6, 2017, as SHPD was led to believe that no ground disturbing work would take place as part of the water-lease issuance. OHA questions this portrayal of the proposed water lease as having no ground disturbing work since the DEIS states that the water lease will allow for A&B/EMI to maintain and repair existing access roads and trails that are part of the EMI Aqueduct System. Such repair work often includes ground disturbing activities.

The specific details (i.e., locations, staging areas, construction access routes, and scope of work) of the maintenance and repair work are not detailed within the DEIS. Including these improvements without a clear scope in the DEIS arguably could lead A&B/EMI to think that these actions do not require HRS 6E review. OHA requests that details be provided regarding proposed

⁴ See pages 3-6 and 3-14 of the DEIS.

⁵ See page ix of the DEIS.

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November 6, 2019
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maintenance and repair work as withholding the scope and breadth of such actions may mislead the evaluation of impacts to historic properties.

The DEIS goes on to state that should there be inadvertent cultural finds, including human remains, in the License Area, that these discoveries will be immediately reported to SHPD. OHA notes however that simply contacting SHPD does not ensure compliance with relevant rules governing inadvertent discoveries. Procedures for inadvertent discoveries, other than a burial site, is governed by HAR 13-280. These rules require that work in the immediate area halt and that nothing will be removed until SHPD can evaluate the find. Depending on the findings, SHPD may require a mitigation plan. Procedures for inadvertent human burials are governed by HAR 13-300-40. These rules also require that work in the immediate area halt, but further requires that the coroner and the police department be contacted in addition to SHPD. OHA thus recommends that the DEIS include a clause that ensures compliance with these rules.

OHA looks forward to reviewing a revised DEIS that addresses our concerns regarding alternatives, cultural impacts, and HRS 6E compliance. If needed, OHA is willing to engage in any future discussions or consultations. Should you have any questions, please contact our Lead Compliance Specialist, Kamakana C. Ferreira, at (808) 594-0227, or by email at kamakanaf@oha.org.

‘O wau iho nō me ka ‘oia ‘i‘o,



Sylvia Hussey, Ed.D.
Ka Pouhana Kūikawā, Interim Chief Executive Office

SH:kf

CC: Carmen Hulu Lindsey, Ke Kua ‘O Maui, OHA Trustee



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Dr. Sylvia Hussey
Chief Executive Officer
Office of Hawaiian Affairs
State of Hawai'i
560 N.Nimitz Highway, Suite 200
Honolulu, HI 96817

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Dr. Hussey:

Thank you for comments dated November 6, 2019 (ref. HRD19-8044C), and emailed to us on November 7, 2019, regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The Office of Hawaiian Affairs (OHA) is in receipt of your September 23, 2019 letter notifying us of the Alexander & Baldwin, Inc., and East Maui Irrigation Company, Ltd. (A&B/EMI) Draft Environmental Impact Statement (DEIS) in support of a proposed water lease for Nahiku, Ke'anae, Honomanū, and Huelo License Areas in Hana and Makawao, Maui (License Area). Wilson Okamoto Corporation has been contracted by A&B/EMI to complete this DEIS in accordance with Hawai'i Revised Statutes (HRS) Chapter 343 and Hawai'i Administrative Rules (HAR) Chapter 11-200. OHA understands that pursuant to HRS 171-58, A&B/EMI will still have to acquire the water lease via public auction and also develop a watershed management plan in collaboration with the State of Hawai'i Department of Land and Natural Resources (DLNR) as these waters originate on and traverse State lands.*

Response 1: We acknowledge that the aforementioned Office of Hawaiian Affairs' (OHA) comment letter pertains to the Draft EIS for the proposed Water Lease. We also concur that,

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Letter to Dr. Sylvia Hussey
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pursuant to Hawai'i Revised Statutes § 171-58, any Water Lease lessee would need to acquire the proposed Water Lease in a public auction process as described in Section 1.4 of the Draft EIS. The Water Lease lessee will also have obligations related to the development of a watershed management plan in conjunction with the Department of Land and Natural Resource (DLNR). This is addressed in Section 2.1 of the Draft EIS, which has been updated in the Final EIS to address the actions of the DLNR and the Board of Land and Natural Resource (BLNR) taken after publication of the Draft EIS regarding the minimum content requirements of a watershed management plan. See pages 2-2 to 2-4 of the Final EIS.

Comment 2: *The sought water lease would be a long-term, 30-year lease from the DLNR and Board of Land and Natural Resources (BLNR), for the diversion, transport, and use of government owned public trust waters in the License Area via the existing EMI Aqueduct System. Currently, it's expected that 65.88 million gallons per day (mgd) of water will be utilized from surface water sources, while 16.47 mgd will be utilized from ground water sources.*

Response 2: We concur with your characterization of the proposed Water Lease and the amount of surface water that could be conveyed under the lease to the Central Maui agricultural fields now owned by Mahi Pono. We also concur with the amount of groundwater you cite that may be available to supplement surface water in those agricultural fields. However, it should be noted that these water amounts are after system losses occur within the Central Maui Field Irrigation System. The Draft EIS in Section 2.1.2 explains how the surface and groundwater amounts were derived. The surface water amount for the Central Maui agricultural fields includes compliance with the Commission on Water Resources Management (CWRM) Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O); deduction of amounts conveyed to the Maui Department of Water Supply (MDWS) for users in Upcountry Maui, including the expanded Kula Agricultural Park (KAP); and system losses within the on-farm Central Maui Field Irrigation System.¹ Accounting for these factors, approximately 65.88 mgd of surface water will be available for application to the Central Maui agricultural fields, as cited in your comment.

Also cited in your comment is the 16.47 mgd of brackish groundwater from sources in Central Maui that is estimated to supplement the 65.88 mgd of surface water for a total of 82.35 mgd as explained in Section 2.1.4 of the Draft EIS. Mahi Pono has groundwater wells that can supplement surface water to approximately 17,200 acres of the Central Maui agricultural fields at

¹ The assumption of 22.7% for system losses from the Mahi Pono Field Irrigation System includes water lost to evaporation and leakage from reservoirs and ditches (although the leaked water seeps down and recharges the aquifer), and water for fire protection and dust control. Some surface water is used to power a hydroelectric facility, but this is a non-consumptive use of the water. The assumed percentage for system losses does not take into account possible improvements to the on-farm irrigation system that could reduce water losses.

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the lower elevations. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. During sugarcane operations, the combined pumping capacity of A&B's 15 brackish water wells was 228 mgd of brackish water, but the true instantaneous pumping capacity of the wells – the most that could be pumped over 3 to 5 days – was 115 mgd during sugar cultivation, after which sump levels started to decline. From 1986 to 2013, A&B pumped an average of 71 mgd from the brackish water wells; during the 2008-to-2013 period, these wells delivered about 70 mgd of brackish groundwater to the lower-elevation fields. This was a suitable source of water for sugarcane during droughts because sugarcane can tolerate periodic use of water with higher salinity levels. However, please note that Section 2.1.4 of the Final EIS regarding the description of the brackish groundwater wells that serve the Central Maui Field Irrigation System has been revised to accurately reflect the fact that Mahi Pono only has 10 wells that can provide brackish groundwater to the Central Maui agricultural fields, as shown on page 2-25.

It should be noted that the dynamic relationship between surface and groundwater in the Central Maui agricultural fields affects the amount and quality of groundwater available for Mahi Pono's farm plan. Sections 3.1.1.1 and 4.2.2 of the Draft EIS explain the major role that surface water losses through the Central Maui Field Irrigation System, as mentioned above and, even more significantly, the percolation of applied surface water below the root zone of crops, has on groundwater recharge.

Once percolating surface water enters the groundwater table, however, it is substantially more saline when pumped to the surface for irrigation. As discussed in Section 2.1.4 of the Draft EIS, the crops planned to be cultivated by Mahi Pono are not as salt tolerant as was sugarcane. In comparison to the former period during sugarcane cultivation, far less surface water will be imported for irrigation and correspondingly less of that water will enter the groundwater table for potential irrigation use. Factoring in the limited salt tolerance of diversified agricultural crops, the use of brackish water on the lower fields is assumed to be limited to about 30% of the water applied. Combining the upper and lower fields, the overall water split across all 30,000 acres would be approximately 80% surface water and 20% brackish groundwater water. If insufficient water is available from the EMI Aqueduct System, then crop farming will have to be reduced no matter how much brackish water is available.

Also factoring into the amount of water that may be available through the proposed Water Lease for the Central Maui agricultural fields is the Department of Hawaiian Home Lands' (DHHL) rights to reserve water sufficient to support current and future homestead needs, as discussed in Section 2.1.1 of the Draft EIS. Specific information regarding the DHHL future water

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reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019 as shown on pages 2-4 to 2-7. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM. Consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

Comment 3: *The BLNR cannot approve any water lease without completion of an applicable environmental review pursuant to HRS Chapter 343. The DEIS states that the water lease will further enable A&B/EMI to access State-owned lands for the purposes of maintaining and repairing existing access roads and trails for the EMI Aqueduct System.*

Response 3: We acknowledge that a compliance with HRS Chapter 343 is a prerequisite for the BLNR to issue the Water Lease. Should the proposed Water Lease be issued, it would allow the BLNR-awarded lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System and the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users as

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discussed in Section 2.1 of the Draft EIS. Moreover, as discussed in Section 1.4 of the Draft EIS:

For the purposes of HRS Chapter 343, the applicant for the Water Lease is A&B, pursuant to orders of the BLNR in April and June of 2016, directing A&B to prepare an EIS. In accordance with HAR of the State of Hawai‘i Department of Health (DOH), Section 11-200-4(b), the BLNR, as the executive board of the DLNR, is the accepting authority for the proposed EIS because the DLNR is the agency initially receiving and agreeing to process the request for the issuance of a Water Lease at public auction.

Comment 4: *The EMI Aqueduct System, which has been in use for generations, has been designed and used to convey stream waters from East Maui to over 30,000 acres of land for domestic and commercial agricultural purposes in portions of Upcountry, East, and Central Maui. Although the water lease was originally obtained by A&B in 1876 to facilitate sugarcane production, A&B has since ceased its sugarcane activities and recently divested itself of its landholdings in the serviced areas. Current landowners, like farming company Mahi Pono, utilize water for diversified (commercial) agricultural purposes. Mahi Pono has developed a Farm Plan for these properties that drives some of the water use decisions within the DEIS. Some of this water is also provided to the County of Maui Department of Water Supply (MDWS) for municipal uses.*

Response 4: As discussed in Section 2.1 of the Draft EIS, the EMI Aqueduct System, assuming the proposed Water Lease is issued for the maximum amount of water that may be awarded, would continue to convey diverted surface water to MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, and use by Mahi Pono and its lessees for agricultural, reservoir, and agriculturally related industrial needs (including dust control, hydroelectric, and fire suppression needs), and, for an interim period, for the continuation of certain historic uses, including water for pasture, livestock, non-profit irrigation and fire suppression at/around the Pu‘unene Mill area, including for non-profits and a federal post office, as well as for related uses around the County's Central Maui landfill (quarry, composting, and C&D landfill for purposes such as restrooms, dust control That Water Lease will also insure the continued delivery of water for a portion of the Nāhiku community, which, through the MDWS, draws water from EMI's West Makapipi Tunnel 2 (Well No. 4806-07), a development tunnel located on EMI's land, directly adjacent to in the Ko‘olau Ditch near Makapipi Stream, which is has been clarified in Section 2.1.3.3 as shown on pages 2-21 to 2-22.

As discussed in Draft EIS Section 1.1, in December 2018 A&B sold the majority of its former sugarcane lands in Central Maui to Mahi Pono, whose objective is to continue to transition as

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much of the former sugarcane land as possible to diversified agriculture. The Mahi Pono farm plan is presented in Section 2.1.4 of the Draft EIS and is depicted on Draft EIS Figure 2-6, which is now Figure 2-9 in the Final EIS. Please note that the Mahi Pono farm plan is like any responsible farming plan, a fluid and responsive plan that will make adjustments to the type of agricultural activity to be pursued (i.e. orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.) in response to the ever-changing agricultural market demands, to agronomic conditions and to economic and other variables such as the availability and cost of water for crop irrigation.

Comment 5: *While OHA has endeavored to provide as comprehensive review of the DEIS as practicable within the time allotted, OHA notes that requests for a time extension of the public review period from numerous stakeholders, including Maui county officials and OHA staff, were not accommodated. Accordingly, OHA makes no representation that the comments below are an exhaustive and complete review of all potential issues and concerns with this 2,700 page document; the comments provided nevertheless highlight representative areas of particularly salient concern. OHA looks forward to reviewing a revised DEIS that reflects a good faith effort to address the categorical concerns raised in this letter, and by other stakeholders representing Native Hawaiian interests and concerns.*

Response 5: Under the applicable laws (HRS, Chapter 343 and HAR Title 11, Chapter 200), the review and comment period for the Draft EIS is 45 days. Neither the statute nor the rules provide a mechanism or authority by which the Applicant can extend the comment period. (See HRS § 343-5(e) ("The draft statement shall be made available for public review and comment through the (OEQC) for a period of forty-five days.")) The Draft EIS has been revised to incorporate substantive comments received during the consultation and review processes, consistent with HAR § 11-200-18 and has been published as the Final EIS.

Comment 6: *OHA offers the following comments regarding the DEIS' (1) alternative actions analyses, (2) cultural impacts analysis, and (3) HRS 6E (historic preservation) compliance:*

Response 6: We have responded to the three sets of comments you offer, and have provided section headings for each topic below. Your comments have been divided and sequentially numbered to facilitate providing our point-by-point responses, which are correspondingly numbered.

ALTERNATIVES COMMENTS

Comment 7: *The analyses and rejection of alternatives are inconsistent, incomplete, and insufficiently detailed. OHA previously commented on the Environmental Impact Statement*

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Preparation Notice (EISPN) for the subject DEIS and water lease in April 2017, recommending that alternatives to the proposed water lease action (inclusive of shorter lease terms and the no-action alternative of discontinuing water diversions entirely) be considered as HAR § 11-200-17(f) requires a comparative analysis of such alternatives. Per the rules, the comparative analysis "shall describe...alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected," with a "rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks" (emphases added).

Response 7: We acknowledge receipt of OHA's previous letter dated April 4, 2017, commenting the EIS Preparation Notice (EISPN). Although that letter was received after the 30-day EISPN comment period, which ended on March 10, 2017, a response letter dated September 23, 2019, was prepared and sent to OHA. Your comments were taken into consideration in preparing the Draft EIS and both your comment letter and our response letter were also reproduced in Appendix M of the Draft EIS.

HAR §11-200-17(f) requires an analysis of alternatives to the proposed action "which could attain the objectives of the action." The objectives of the Proposed Action, as stated in Section 1.2 of the Draft EIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku.

In its EISPN comment letter, OHA suggested that the EIS consider the effects of differing diversion volumes, including the discontinuation of diversions altogether, and that the EIS consider the effects of shorter lease term. These alternatives were addressed in Chapter 3 of the Draft EIS, which includes an analysis of: (a) a Reduced Water Volume alternative (Section 3.2.1); (b) an Alternative Lease Duration alternative (Section 3.2.2.1); (c) a Modified Lease Area alternative (Section 3.2.2.2); and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued and the Applicant would be limited to 30% of the water diverted from the License Area, plus the modest amount of water that is diverted from outside of the License Area (Section 3.3). The impacts of these scenarios were assessed through a comparative evaluation in Section 3.4 of the Draft EIS across a spectrum of environmental factors (topography, soils, surface water and aquatic environment, groundwater, coastal waters, drainage, natural hazards, flora, fauna, invertebrates, historic resources, cultural resources and practices, social characteristics, economic and fiscal impacts, agricultural and related impacts, recreational

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resources, visual resources, air quality, noise, hazardous materials, traffic, public water systems, and public services and facilities) within East Maui, Upcountry Maui and the Central Maui agricultural fields. Please note that a summary of the comparative evaluation has been added to Section 3.5 of the Final EIS as shown on pages 3-49 to 3-80 as Table 3-2.

Moreover, Chapter 3 of the Draft EIS also identified other alternatives that were reviewed for their potential to meet the objectives, but which were ultimately determined to be infeasible. That analysis has been further supplemented based on comments received on the Draft EIS as shown on pages 3-2 to 3-19, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility, and desalination were all considered. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects, and therefore those alternatives were discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Section 3.1.2 of the Draft EIS acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by another entity other than EMI. However, that alternative was also deemed to be infeasible, as discussed in the Draft EIS.

Section 3.4 of the Draft EIS includes a comparative evaluation of the environmental "benefits, costs, and risks" of the proposed Water Lease, the no Water Lease alternative, and "each reasonable alternative" i.e. (a) through (c). Table 3-2 has been added to Section 3.5 of the Final EIS so that readers can more easily compare the varying environmental benefits, costs, and risks of the Proposed Action at full implementation of the Mahi Pono farm plan, the "no action" alternative, and the reasonable alternatives to the Proposed Action. See pages 3-49 to 3-80 of the Final EIS.

Comment 8: *In the spirit of the law and rules, alternatives are not to be evaluated with a myopic focus on the alternatives' potential adverse effects on the applicant's profits. While OHA appreciates the inclusion of an alternatives analysis that generally considers the approaches OHA previously suggested, OHA believes the: (1A) dismissed alternatives rely on unrealistic or extreme demands that deprives them of their eligibility for comparative analysis; and, (1B) "reasonable" alternatives are poorly explored without sufficient justification for their rejection, thus improperly favoring the preferred alternative preferred alternative*

Response 8: The alternatives considered in Chapter 3 of the EIS, including those evaluated but determined to be infeasible to attain the objectives of the Proposed Action, and therefore dismissed from further review, and the alternatives that were fully assessed for comparative purposes, were not selected with a focus on potential profits for the Applicant. The focus was

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on what is practical or feasible from the technical and environmental point of view and would achieve the objectives of the Proposed Action. Your specific comments identified as (1A) and (1B) are addressed below.

The alternatives analysis did not favor the proposed Water Lease over the other reasonable alternatives that could attain the objectives of the Proposed Action. The Draft EIS considered the environmental effects of each reasonable alternative and the No Action alternative on a range of environmental factors (topography, soils, surface water and aquatic environment, groundwater, coastal waters, drainage, natural hazards, flora, fauna, invertebrates, historic resources, cultural resources and practices, social characteristics, economic and fiscal impacts, agricultural and related impacts, recreational resources, visual resources, air quality, noise, hazardous materials, traffic, public water systems, and public services and facilities) within East Maui, Upcountry Maui and the Central Maui agricultural fields. The analysis of environmental factors and impact areas of the proposed Water Lease is found in Chapter 4 of the Draft EIS. Moreover, the alternatives that were assessed through a comparative evaluation of reasonable alternatives in Chapter 3 were not "rejected" as you suggest they were. The EIS was prepared to provide disclosure on the potential impacts of the Proposed Action and the reasonable alternatives. That said, as noted in Response #7, Table 3-2 has been added to Section 3.5 of the Final EIS so that readers can more easily compare the varying environmental effects of the alternatives and the Proposed Action. See pages 3-49 to 3-80 of the Final EIS. Moreover, as discussed in Response #7 above, in response to comments on the Draft EIS, the analysis of the alternatives that had been dismissed from in depth review has been further supplemented within Chapter 3 of the Final EIS, as shown on pages 3-2 to 3-19.

Comment 9: *Dismissed alternatives rely on unrealistic or extreme demands. Section 3.1 of the DEIS lists two "dismissed" alternatives that OHA is particularly concerned with having unrealistic demands: groundwater use and added storage capacity. These alternatives were eliminated from a detailed comparative analysis as they were considered impractical (i.e., drilling multiple new wells, installing pumps, building storage tank capacity).*

Response 9: We concur that the groundwater use and added storage alternatives were considered in the Draft EIS, but ultimately dismissed as they were not considered viable options for various reasons, including the intensification of environmental effects and lack of feasibility and inability to meet the goals and objectives of the Proposed Action. As discussed in Section 3.1 of the Draft EIS:

This chapter also reviews alternative means of achieving some of the objectives of the Proposed Action through alternative sources of water. However, a preliminary analysis determined that these options are not considered viable for

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various reasons including the expected intensification of environmental effects and lack of feasibility. Therefore, these options are considered but dismissed from further study.

Regarding the “groundwater alternative” discussed in Section 3.1.1.1 of the EIS, this alternative is intended to reduce the amount of surface water required for irrigation to support diversified agriculture in Central Maui. If a sufficient groundwater source can be developed, then groundwater coupled with the amount of surface water available under the “No Action” alternative or the “Reduce Water Volume” alternative could, conceivably, meet the objectives of the Proposed Action. In this regard, the Draft EIS considered drilling new groundwater wells in Central Maui and East Maui (a total of 53 new wells were considered as a replacement to the water sought through a Water Lease). This analysis has been supplemented in the Final EIS, using the environmental criteria identified therein, to review the possibility of drilling approximately 26 new well sites to supplement, rather than replace, the surface water that could be authorized under the Water Lease.

As an overview, please refer to our previous Response #2 that explains the dynamic relationship of surface water and groundwater in Central Maui and the salt-tolerance of diversified agricultural crops in Mahi Pono’s farm plan. The Central Maui aquifers have a limited amount of natural groundwater resources due to low rainfall in the area, as discussed in Section 3.1.1.1 of the Draft EIS. The pumping of brackish groundwater from the Central Maui aquifers has been sustained at levels that far exceed the CWRM designated sustainable yield (SY). This has been possible due to aquifer recharge that took place as a result of using East Maui surface water to irrigate the Central Maui agricultural fields. With respect to groundwater pumping in the Central Maui agricultural fields, Section 3.1.1.1 of the Draft EIS explains:

The average pumping rate from 1987 to 2006 was about 26,663 mg per year. This volume equates to a pumping average of 73 mgd. Brackish groundwater used on the Central Maui agricultural fields during that time was approximately 42.5 mgd. (Plasch, 2019). This average daily pumping rate is well above the Sustainable Yield (SY) of 8 mgd (7 mgd for the Pā‘ia aquifer and 1 mgd for Kahului aquifer), as determined by the CWRM (see detailed discussion in Section 4.2.2). This high pumping rate may have been achievable in the past due to the large amount of recharge that was occurring when sugar was being cultivated and irrigated by surface water. During this same period, irrigation from surface water in Central Maui was approximately 112 mgd, and an additional approximately 44 mgd of surface water was applied to the fields through system losses (evaporation and leakage) within the Central Maui field system. The recharge from these system losses were replenishing the Kahului and Pā‘ia aquifers and is likely the reason that pumping groundwater at rates greater than the SY was achievable.

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Hence, high pumping rates in the past were possible as significantly more surface water was being diverted by the EMI Aqueduct System from East Maui to Central Maui and utilized to irrigate the Central Maui agricultural fields overlying the Central Maui aquifers, thereby recharging those aquifers. Under the Proposed Action, it is estimated that approximately 87.95 mgd could be available to divert from the License Area after compliance with the CWRM D&O and an additional 4.37 mgd from private lands in between Honopou Stream and Māliko Gulch, for a total of 92.32 mgd. However, after surface water distribution to MDWS, approximately 85.22 mgd of gross total potential surface water would be available for the Central Maui agricultural fields prior to system losses within the Central Maui Field Irrigation System. This is far less than was diverted and therefore used to irrigate Central Maui in the past (as discussed above) and therefore less recharge of the Central Maui aquifers is projected to occur. This will decrease the amount of groundwater that can be pumped from the Central Maui wells.

Response #2 also discusses the saline content of the groundwater in the Central Maui aquifers, which is considered brackish and, therefore, is less suitable for diversified agriculture than for sugarcane, which is more salt tolerant. The Mahi Pono farm plan is a diversified agricultural plan as discussed in Section 2.1.4 of the Draft EIS, which proposes orchards, tropical fruits, row and annual crops, and energy crops. Hence, use of brackish groundwater would be limited. Specifically, Section 2.1.4 of the Draft EIS states:

From 1986 to 2013, A&B pumped an average of 71 mgd from the brackish water wells; during the 2008-to-2013 period, these wells delivered about 70 mgd of brackish groundwater to the lower-elevation fields. This was a suitable source of water for sugarcane during droughts because sugarcane can tolerate periodic use of water with higher salinity levels.

When the sugarcane fields were in cultivation, well water was being applied typically during dry periods, when surface water was not available for sustained periods. Sugar cane was cultivated in a twenty-four month crop cycle, providing ample time for the crop to recover from a prolonged use of brackish water. The crops planned for Mahi Pono's diversified agricultural operation may have a shorter crop cycle and be much less tolerant than sugar cane of higher salinity levels. Thus, the planned crops will generally be more vulnerable to the negative impacts on crop growth associated with prolonged exposure to brackish water and lower crop yields.

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Notwithstanding all of these limitations, the Draft EIS did consider the alternative of drilling additional wells in the Central and East Maui aquifers as an alternative to using surface water pursuant to a Water Lease. Specifically, Section 3.1.1.1 of the Draft EIS states:

To increase groundwater yields, additional wells could be drilled in other aquifers in Central and East Maui. Assuming that a single well is normally allowed to pump about 1 mgd within its area, 53 new well sites would need to be developed, each requiring site acquisition, drilling, testing and if adequate, brought into production. These wells would need to be spaced far enough to avoid salt water intrusion into the aquifer. Each well site would have an estimated development cost of \$6 million. (Akinaka, 2019). To plan, obtain permits for, and construct 53 wells would probably be in the order of \$318 million. Added to this cost would be transmission pipes, additional pumping and related energy consumption to reach higher elevations, and reservoirs. It is anticipated to be very unlikely that 53 new wells could be constructed within the Central and East Maui areas, as the environmental impacts would be considerable and permit approvals would be prohibitive. Therefore, the groundwater alternative is viewed as an unreasonable alternative with greater risks of adverse environmental effects than the Proposed Action, and was dismissed from further review.

Hence, for the various reasons discussed above, this alternative was dismissed from further consideration. However, Section 3.1.1.1 of the Final EIS has been revised to consider further variations of this alternative, as shown on pages 3-3 to 3-9.

The "added storage" alternative discussed in Section 3.1.1.3 of the Draft EIS considered, but ultimately dismissed, the alternative of upgrading existing, but out of service, reservoirs and constructing a large new reservoir. Regulatory, environmental, and safety concerns make these options, which involve major ground disturbance activities, infeasible.

Ultimately, added storage capacity cannot serve as a substitute for a source of water, but only to assure a more consistent availability of water between periods of surplus and deficit from a source. While reservoir/storage improvements might improve the efficiency of the Central Maui Field Irrigation System, those improvements would be at the cost of providing less recharge to the underlying Central Maui aquifers, which in turn will decrease the amount of brackish well water Mahi Pono can rely on for its irrigation needs. Moreover, the reservoir/storage improvements do not constitute a discrete alternative for providing an additional source of needed water, and instead represent at best a means by which the operational efficiency of the Central Maui Field Irrigation System may be improved. To provide more clarity, Section 3.1.1.3

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of the Final EIS has been revised to consider further variations of this alternative, as shown on pages 3-11 to 3-14.

Comment 10: *To quote the DEIS, it states that these dismissed alternatives "are not considered viable for various reasons including the expected intensification of environmental effects and lack of feasibility." Their subsequent summary dismissals unreasonably foreclose any meaningful exploration of how the "alternative" approaches may in fact be used to mitigate adverse environmental effects and achieve perhaps a more appropriate/reasonable balance between the agricultural development of Central Maui and the protection of East Maui's environment.*

Response 10: Regarding the foreclosure of any meaningful exploration of the dismissed alternatives, Section 3.1.1 of the Draft EIS provides a robust discussion and assessment of three Water Sources Alternatives, and that discussion has been further supplemented in the Final EIS to address these alternatives as a means to augment the Water Lease water (rather than replace the Water Lease water entirely). See pages 3-2 to 3-19 of the Final EIS. We also note that the Draft EIS, at Section 3.2.1, describes the anticipated impacts of the Reduced Water Volume Alternative which is then fully assessed in Section 3.4, a Comparative Evaluation of the Reasonable Alternatives.

Section 3.4.3 includes a discussion of impacts resulting from diverting less streamflow on the Surface Water and Aquatic Environment in the License Area. It addresses your comment about the protection of East Maui's environment. In the section, the results of the Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model) are applied to the No Action alternative and is discussed in terms of gains in Habitat Units (HU). The HSHEP model estimates that under a No Action scenario, approximately 1,394,508 potential HU (i.e., approximately 79.8 percent of potential HU) would be available within the License Area for native species population. Put another way, the No Action alternative decreases the amount of available habitat units by approximately 20.2 percent. Whereas, under the proposed Water Lease, the potential number of HU within the License Area is estimated at 1,116,581 (or, approximately 63.9% of the potential maximum).

Addressing the balance in your comment, Section 3.4.13 (Agricultural and Related Economic Resources) discusses the impacts that reduced volumes of surface water would have on Mahi Pono's farm plan and related economic and fiscal impacts.

Comment 11: *For example, the dismissed groundwater alternative is described as potentially reducing the amount of East Maui surface water required for irrigation in Central Maui, but seems to actually eliminate and essentially replace all surface water demands. The DEIS*

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speculates that since current aquifers (Pa'ia and Kahului) can't support more than 4 mgd due to reductions in aquifer recharge rates, additional wells would need to be drilled in other aquifers in order for this method to effectively contribute to water needs. The DEIS, however, appears to use this speculative "safe pumping rate" as a means to propose that "53 new well sites would need to be developed" with pumping capacity of 1 mgd each. Hydrological speculation aside, the total amount of water produced from these 53 wells would be about 80% of the expected 65.88 mgd surface water draw and more than three times the expected 16.47 mgd draw on ground water under the proposed water lease.

Response 11: As discussed above in Response #9, the “groundwater” alternative has the potential to reduce the amount of surface water required. However, it cannot eliminate or replace all surface water demands as asserted in your comment above. In Central Maui the aquifers have very low SY rates that cannot meet irrigation demands without some surface water recharge which would allow some pumping exceeding the SY. Moreover, the groundwater in Central Maui is brackish, which further restricts its use for irrigating diversified agricultural crops, also as discussed in Response #9. Moreover, groundwater development in the East Maui aquifers has been analyzed as shown on pages 3-3 to 3-9 of the Final EIS which was also deemed infeasible.

Regarding your comment about the speculative “safe pumping rate”, we reiterate that the Central Maui aquifers have very low SY rates that cannot meet the irrigation demands of Mahi Pono’s proposed farm plan without surface water recharge. This is in contrast to when sugarcane was being cultivated and authorized diversions from East Maui were much higher than currently proposed for the Water Lease. Past pumping rates could substantially exceed the SY rates because a significant amount of surface water was being delivered to the Central Maui agricultural fields for irrigation purposes. However, the permitted diversions under the CWRM D&O, should the Water Lease be issued, would provide significantly less surface water for irrigation and, correspondingly, to recharge the Central Maui aquifers.

The alternative of drilling 53 new wells (as discussed in Chapter 3 of the Draft EIS under the groundwater alternative) would not, as you suggest, "eliminate and essentially replace all surface water demands." Those new wells would supplement the limited surface water diversions (approximately 30.76 mgd) that are allowed by right, as described in Section 3.3 of the Draft EIS in the No Action alternative, where no Water Lease is issued. With approximately 53.00 mgd of groundwater supplementing the 30.76 mgd of surface water, a total of 83.76 mgd could be used to support the Mahi Pono farm plan in Central Maui. This contrasts to the Proposed Action, where Draft EIS Table 2-1, shows the farm plan dependent of a total of 82.33² mgd of irrigation

² Note that Table 2-1 of the Draft EIS identified the Mahi Pono farm plan as requiring approximately 82.33 mgd of water at full build out. Table 2-1 in the Final EIS has been corrected to reflect that the water requirement for the Mahi Pono farm plan is approximately 82.34 mgd.

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water, comprised of 16.47 mgd of groundwater (the availability of which is highly dependent upon the use of East Maui surface water to irrigate the underlying Central Maui aquifers), plus 65.86 mgd of surface water (after system losses in the Central Maui Field Irrigation System). While the total volumes of irrigation water available for the Proposed Action and No Action alternative may be comparable, the substantially greater proportion of brackish groundwater in the No Action alternative would severely limit its use in the Mahi Pono farm plan for reasons discussed previously.

Moreover, as discussed in Section 3.1.1.1 of the Draft EIS, these wells would need to be spaced far enough apart to avoid even greater salt water intrusion into the aquifer, creating extensive new land use demands. There would also be considerable environmental and economic costs. It is estimated that to plan, obtain permits for, and construct 53 wells would probably be in the order of \$318 million. Added to this cost would be transmission pipes, additional pumping and related energy consumption to reach higher elevations, and reservoirs. It is anticipated to be very unlikely that 53 new wells could be constructed within the Central and East Maui areas, as the environmental impacts would be considerable and permit approvals would be prohibitive. As in the case of the added storage alternative, the infeasibility of the groundwater alternative means accepting a lower volume of surface water without the cost and environmental impacts of developing additional groundwater sources, even if it means that the objective of implementing Mahi Pono's farm plan cannot be fully realized. As discussed previously, this is the Reduced Water Volume Alternative described in Section 3.2.1 and evaluated in Section 3.4 Comparative Evaluation of Reasonable Alternatives.

Notwithstanding these significant environmental and practical issues associated with drilling additional wells to supplement a limited amount of East Maui surface water, as noted in Response #9, Chapter 3 has been updated in the Final EIS to include a further discussion of the groundwater alternative, whereby 26 new well sites were identified for consideration (6 in the Ke'anae Aquifer, 7 in the Waikamoi Aquifer, 7 in Honopou Aquifer, and 6 in the Ha'ikū Aquifer), which could provide up to 26 mgd of replacement water, which is a fraction of what the Mahi Pono farm plan needs at full implementation. See pages 3-3 to 3-9 of the Final EIS. Note that the updated analysis in Chapter 3 considers the drilling of the approximately 26 new well sites to supplement, rather than replace, the surface water that could be authorized under the Water Lease, in an effort to assess a less extreme alternative than the drilling of the 53 new wells that was discussed in the Draft EIS.

Comment 12: *The DEIS then cites that costs, property acquisitions, and environmental impacts from these 53 wells would make the alternative unfeasible. There is no clear explanation for why such an arbitrary large number of wells is needed to "reduce" the amount of East Maui surface water to meet the objectives of the proposed action. By unreasonably recharacterizing this*

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alternative as one that would essentially replace, rather than moderately reduce East Maui surface waters with Central Maui groundwater sources, the DEIS avoids any detailed analysis of a less extreme increased groundwater alternative that might strike a better balance between the environmental, cultural, and other public trust purposes of East Maui's streams with the agricultural needs of Central Maui. OHA thus recommends that the DEIS explore less extreme options of this alternative that are more balanced.

Response 12: As explained in Response #11, the groundwater alternative addressed in Section 3.1.1.1 of the Draft EIS did not contemplate replacing all East Maui surface water with new groundwater wells. Contrary to your comment, 53 new wells is not an "arbitrary large number" but rather a number that would replace the surface water that would otherwise be provided from the East Maui streams under the Proposed Action. Nevertheless, as noted in Response #11, Chapter 3 of the Final EIS has been updated to further supplement the groundwater analysis. See pages 3-3 to 3-9 of the Final EIS.

Comment 13: *Similarly, the dismissal of the "added storage capacity" alternative is based upon an assertion that upgrading all of Central Maui's 48 existing major reservoirs or constructing a large reservoir to store a commensurate level of water are the only scenarios. Not surprisingly, such a huge endeavor would cost an unfeasible \$50 to \$100 million for upgrades, or \$300 million for a single large reservoir. There is no moderate alternative proposed as the DEIS does not explore any other possibility other than repairing all reservoirs or the construction of a singular large reservoir with a capacity of 1,200 mg. Furthermore, there is no explanation behind the apparent assumption that this alternative requires all surface water flows to be replaced by stored water for an entire month.*

Response 13: As discussed in Response #9, added storage capacity cannot serve as a substitute for a source of water but only to assure a more consistent availability of water between periods of surplus and deficit from a source. Reducing the amount of water from the source would require progressively more storage capacity with associated costs and environmental impact in order to achieve Mahi Pono's farm plan. However, as previously noted, Chapter 3 has been revised in the Final EIS to supplement the alternatives discussion that was provided in the Draft EIS, including a further review of the Added Storage Alternative addressed in your comment. See pages 3-11 to 3-14 of the Final EIS.

Comment 14: *With the summary rejection of this "added storage capacity" alternative, the DEIS avoids any detailed consideration or comparative analysis of a less extreme added storage capacity scenario that could reduce the environmental impacts of the proposed alternative on East Maui's streams, while protecting Central Maui farmers with the reliability of additional water stored during periods of high rainfall. As with the ground water alternative, OHA*

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recommends that the DEIS explore less extreme options of this alternative that are more balanced.

Response 14: HAR § 11-200-17 (f) states: “The draft EIS shall describe in a separate and distinct section alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected.” The Draft EIS states the objectives and describes the Proposed Action in Sections 1.2 and 2.1, respectively. The Proposed Action is based on a Water Lease being issued for the maximum amount water available after compliance with the flow standards under the CWRM D&O in order to achieve its multiple objectives. As discussed in Response #13, the addition of water storage capacity does not replace the need for water source. Nevertheless, as previously noted, Chapter 3 has been revised in the Final EIS to supplement the alternatives discussion that was provided in the Draft EIS, and includes a review of, to use your terminology, a "less extreme" added storage capacity scenario. See pages 3-2 to 3-19 of the Final EIS.

Comment 15: *The "reasonable" alternatives are poorly explored without sufficient justification for their rejection. The DEIS does offer three "reasonable" alternatives for its "detailed" comparative analyses: shorter water lease durations, reduced water volumes, and a modified water lease area option. Ultimately, although the reasonable alternatives would potentially mitigate adverse impacts resulting from the disruption and diversion of stream flow under the proposed action, OHA believes detailed analyses were not sufficiently provided. The rejection of these alternatives appear based on how agricultural investment returns and financing options in Mahi Pono's current Farm Plan for their East Maui properties may be affected, rather than on an objective and comprehensive consideration of their relative beneficial and adverse environmental effects.*

Response 15: Under HAR § 11-200-17, the analysis of reasonable alternatives must be "sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative." As discussed in Response #7 and #8 above, Chapter 3 provides a detailed comparative analysis of the environmental effects of each of the reasonable alternatives as they would affect East Maui, Upcountry Maui, and Central Maui, and Chapter 4 provides an analysis of the environmental effects of the proposed Water Lease along the same environmental criteria, and also within East Maui, Upcountry Maui, and Central Maui. For example, as discussed in Section 3.4.8 of the Draft EIS, anticipated impacts to flora, fauna and invertebrates under the Modified Lease Area alternative could be significant and adverse if the Modified Lease Area alternative resulted in more public access within the 33,000-acres of State land and if that access resulted in vegetation trampling or the introduction of weeds and invasive species. While this might be the result in East Maui, no particular effects are anticipated in Upcountry Maui as a result of the Reduced Lease Area alternative because that

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alternative would not alter any activities in Upcountry Maui. Similarly, the Reduced Lease Area alternative is not expected to impact the Central Maui agricultural fields because the potential for increased public access would be within the State-owned lands in East Maui and not within the Central Maui agricultural fields, and the geographical area of the Water Lease would not alter the amount of surface water that could be diverted. While the Reduced Lease Area alternative has the potential to affect flora, fauna and invertebrates in East Maui, it also has the potential to have new and potentially beneficial impacts on recreational resources in East Maui as discussed in Section 3.4.14, depending upon the extent and manner in which the State allows public access within the 33,000-acres of State land. As a point of clarification, Mahi Pono's farm plan is being implemented in Mahi Pono's Central Maui fields, not in East Maui as you may have misstated.

Regarding the comparative analysis of economic and fiscal impacts under the proposed Water Lease and the reasonable alternatives, this analysis is not exclusively focused on investment returns or financing for Mahi Pono. The analysis covers projected impacts in East Maui, Upcountry Maui, and in/arising from the Central Maui agricultural fields. It examines impacts bracketed by the Proposed Action at one end, the No Action alternative on the other, and the Reduced Water Volume alternative spectrum between them. For example, under the Proposed Action and all water volume alternatives, there are no significant economic and fiscal impacts in East Maui as much of the agricultural, economic and fiscal benefits would have been achieved by implementing the CWRM D&O. In Upcountry Maui and in the Nāhiku community currently served by the MDWS, there is no impact under the Proposed Action but potentially adverse economic and fiscal impacts would mount as the amount of water provided through the Water Lease declines through the Reduced Water Volume alternative toward the No Action Alternative. Similarly, adverse economic and fiscal impacts to Central Maui would increase with a reduction in the amount of water available through the Water Lease. To some degree, however, impacts to Upcountry Maui could be staved off if supplying MDWS is prioritized over supplying water to Central Maui in the Reduced Water Volume alternative. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nahiku is presumed to terminate.

However, as noted in Response #7 Table 3-2 has been added to Section 3.5 of the Final EIS so that readers can more easily compare the varying environmental effects of the reasonable alternatives, the Proposed Action and the No Action/No Water Lease scenario. See pages 3-49 to 3-80 of the Final EIS.

Comment 16: *Regarding the financing concerns cited as a basis for rejecting the shorter lease length and reduced water allocation alternative, OHA notes that insufficient detail is shared on how or what exactly will be financed, and more importantly, how a longer-term water lease or larger initial water allocation will somehow alleviate the apparent financing uncertainties to an*

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extent that justifies the rejection of these less impactful alternatives. For example, in light of the fact that a water lease of any length is always subject to the public trust and the State Water Code, the State can and should adjust or amend water allocations consistent with changing conditions and impacts. Other uncertainties, as further described below, may also impact water allocations under a water lease of any length, regardless of what quantities might be initially diverted under a lease. Thus, OHA believes that sufficient clarification and detail regarding financing needs should be included in the DEIS as it is currently one of the reasons used to reject the proffered "reasonable" alternatives.

Response 16: The State has the authority to issue a water lease for a 65-year term. However, the term of the proposed Water Lease is 30 years. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live

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technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

We acknowledge that should the Water Lease be issued, it will be subject to the Public Trust Doctrine as well as the State Water Code. Section 1.5 has been added to the Final EIS to explicitly address the Public Trust Doctrine. See pages 1-25 to 1-27 of the Final EIS. We note that CWRM, which has jurisdiction and final authority in all matters relating to implementation and administration of the State Water Code, at p. iii of the Executive Summary of the CWRM D&O, characterized the EMI Aqueduct System as “a valuable asset that delivers offstream public trust benefits such as drinking water, as well as irrigation water for reasonable and beneficial uses.” CWRM further stated, at p. vi: “The Commission’s intent in this decision is to ensure that a sufficient amount of offstream water is available to support the cultivation of diversified agricultural crops on the lands designated as IAL [Important Agricultural Lands] in central Maui.” Moreover, the Proposed Action must be in compliance with the CWRM D&O. Impacts arising from reductions in the amount of East Maui surface water that can be diverted (i.e. diversions in amounts less than authorized under the CWRM D&O) are assessed under the Reduced Water Volume alternative.

Comment 17: *Regarding the "return on investment" that would be compromised by the shorter lease length alternative, the over-reliance on long-term investment crops also appears to be an unnecessarily rigid application of what is otherwise described as an adaptive and flexible Farm Plan. The use of the Farm Plan as a means to dismiss alternatives seems to contradict the way the Farm Plan is portrayed in the DEIS which states that the Farm Plan is a "fluid and responsive" plan that responds to the ever-changing agricultural market. OHA believes a more detailed explanation should be provided that can sufficiently describe the specific costs and benefits of the Farm Plan's multiple contingencies prior to rejecting alternatives.*

Response 17: As noted in Section 2.1.4 of the Draft EIS, the Mahi Pono farm plan must be fluid and responsive to the needs of an ever-changing agricultural market as described, as well as responding to other variables such as the availability and cost of water for crop irrigation. Another factor in developing the farm plan is to be sensitive to the existing local farming community. Mahi Pono does not want to displace local farmers by planting competing crops or artificially accelerating the ramp-up of operations, both of which could have the potential to drive local farmers out of the market. This responsiveness is largely due to the proposed 30-year Water Lease, as well as the time it takes other crops to grow and mature. With a longer-term lease, it will be more feasible for Mahi Pono to fulfill its diversified agricultural farm plan by growing orchard crops in Hawai'i that take longer to mature, but that eventually produce fruit

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that is currently imported into the State. If the long-term investments in crops are not considered, it becomes more likely that exports would have to increase. For example, Mahi Pono would grow an abundance of short-term row crops, which have only a limited market within Hawaii. In contrast, orchard crops can take up to 12 years to produce fruit, but then can provide yields for 35 to over 100 years. If a reliable, long-term, source of irrigation water is not available, the Mahi Pono farm plan would, by necessity, be more rigid due to a focus on short-term feasibility, for example, it would be extremely reliant on short-term row crops and cattle ranching.

Comment 18: *Notably, the DEIS argues that the long term lease is needed for Mahi Pono to get their return on long term investment crops. The rigid adherence to the Farm Plan's long term investment drivers discounts uncertainties that may counsel a much shorter lease term than contemplated under the proposed action. For example, the DEIS includes reference to an e-mail from Skippy Hau, an aquatic biologist with the State of Hawai'i Division of Aquatic Resources, noting the lack of information on the amount of water diverted from East Maui, and urging a five-year lease "with constant updates" based on water use and other information gathered during that time. As further suggested by Mr. Hau's e-mail, climate change may also have profound impacts on rainfall patterns, ecosystem dynamics, and the very stability of our ways of life in the near future, potentially requiring adjustments to lease conditions and water allocations consistent with the State Water Code, and the public trust. While the EIS does acknowledge the existence of climate change, it leans towards an overly optimistic take on such impacts and accordingly rejects the shorter lease term alternatives. A rigid adherence to one return on investment scenario and unreasonably dismissive attitude towards uncertainties should not be used to justify the rejection of shorter and more adaptive lease term alternatives that may mitigate or better accommodate uncertain adverse environmental effects. OHA believes that the Farm Plan should include scenarios that do not require or limit the need for long term investment crops. With such a consideration added to the Farm Plan, the DEIS can reassess reasonable alternatives accordingly.*

Response 18: The alternatives analysis in Chapter 3 serves the purposes required under the law. It does not "argue" that a long-term lease is required. The alternatives analysis in Chapter 3 of the EIS allow for "the comparative evaluation of the environmental benefits, costs, and risks of the proposed action [i.e the Water Lease] and each reasonable alternative." See HAR § 11-200-17(f). Such a comparative analysis is intended to inform decision-makers on the relative environmental effects of a range of options. Ultimately, the term of any Water Lease will be set by the BLNR.

We refer you back to our Responses #16 and #17, which discuss the long-term considerations for the proposed 30-year Water Lease. Such long-term considerations, whether in terms of bringing

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the entire 30,000 acres formerly in sugar cane into viable diversified agriculture, the progressive investments in associated farming infrastructure, the maturation of orchard crops, as well as any adaptation to unforeseen climate change require a long-term commitment. The EIS seeks to disclose the anticipated impacts from the Water Lease and reasonable alternatives that are capable of attaining the objectives of the action. As noted in Section 1.1 of the EIS, one of the objectives of the Proposed Action is to "Continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses)." Respectfully, we do not view this as an excessively narrow objective.

The EIS assesses the impacts of a 30-year Water Lease (in Chapter 4), and in Chapter 3 (Alternatives) it also assesses the impacts of a water lease of a different term, dubbed the Alternative Lease Duration alternative. Mr. Hao suggests in his email that there is a lack of information on the amount of water being diverted at each diversion and that climate change could affect this amount; hence, a shorter lease term would allow flexibility in adjusting diversion volumes. It is important to keep in mind that no matter what the term of the Water Lease, or the effects of climate change, the lessee will be limited to the instream flow standards established by the CWRM D&O. In other words, if there is a change in rainfall patterns that affect the streams in the License Area, the CWRM flow standards would still have to be maintained. As discussed in Section 4.3.1 of the Draft EIS, "climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours." Since the EMI Aqueduct System is incapable of diverting such high flows, climate change is unlikely to provide a boon in the availability of surface water to Mahi Pono. If, in the future, there is less water available because of climate change, or DHHL's water reservation, or for any other reason, the Mahi Pono farm plan would have to adapt to use the amount of water that remains available. Unless otherwise changed, the existing contracts would be honored, which would mean that EMI would need to provide the MDWS with approximately 7.1 MGD as discussed in Section 2.1.3 of the Draft EIS (even if this necessitated a cut back on the irrigated farming).

Further to your comment about Mr. Hau's email regarding climate change having profound impacts on rainfall patterns, ecosystem dynamics, and the very stability of our ways of life in the near future, note that Section 4.3.1 of the Draft EIS analyzed current climate change data against the Proposed Action. It is generally acknowledged that current climate change trends which suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. The expected climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. Moreover, climate change could

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result in lower rainfall and thus lower levels of streamflow. Notwithstanding, compliance with the IIFS under the CWRM D&O will be required. Hence less flow would be available for the EMI Aqueduct System to divert, which in turn means less water for MDWS and less water to irrigate the Central Maui agricultural fields. However, the exact nature of how the climate will change and impacts from any changes is unknown. As research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies for climatic changes. Please note that Section 4.3.1 of the Final EIS has been updated to include further climate change data and its impacts on various environmental resources as shown on pages 4-89 to 4-94.

As stated in Section 2.1.4 of the Draft EIS and discussed in Response #17 above, the Mahi Pono farm plan, like any responsible farming plan, is a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e. orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community. However, the EIS also described a version of the Mahi Pono farm plan that could be implemented if no Water Lease was issued. In other words, the EIS does "include scenarios that do not require or limit the need for long term investment crops" as suggested in your comment. Table 3-1 of the EIS depicts a Mahi Pono farm plan in the event that no Water Lease is issued. As a point of comparison, under the "No Action/No Lease" alternative, Mahi Pono's farm plan reduces the Orchard crops acreage from 12,850 acres to 4,180 acres, decreases the Community Farm acreage from 800 acres to 300 under the No Lease alternative, and reduces the acreage for Row and Annual Crops from 1,200 acres to 400 acres.

Comment 19: *Furthermore, similar to the superficial characterizations of the "dismissed" alternatives, OHA notes that the shorter term water lease alternative is presented broadly and without any exploration of the varying term lengths that could and should be considered under this alternative. For example, the DEIS could develop a tiered approach by exploring and comparing the differences in effect and feasibility of varying, specific lease durations. A shorter-term water lease could be anything less than 30 years. Even if Mr. Hau 's well-reasoned 5-year lease recommendation is considered unfeasible, a 10- or 15- year lease could still be utilized to successfully facilitate Mahi Pono's Farm Plan while at the same time providing substantially greater opportunity to understand and address changing environmental conditions and effects. However, the consideration of any lease under 30 years is dismissed in the DEIS, as it declines to propose any specific shorter term lease length in favor of lumping all leases less than 30 years in a single, short-term water lease category. Assessing the impact of a shorter-term water lease with specific durations would be more effective in determining how much of a burden these shorter-term water leases really are on Mahi Pono's Farm Plan, its "return on investment," or*

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other cited reasons for their generic dismissal. Thus, OHA recommends that multiple short term lease options be examined with each option showing impacts to investment returns within Mahi Pono's Farm Plan.

Response 19: As discussed above in Response #18, the term of the proposed Water Lease will be set by the BLNR. The EIS assessed the impacts of a 30-year Water Lease, and assumes 10 years is needed for full implementation of the Mahi Pono farm plan. Chapter 3 (Alternatives) assessed the impacts of a water lease of a different term, dubbed the Alternative Lease Duration alternative. Furthermore, as discussed in Response #16 above, under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. This is not consistent with goals and objectives of the Proposed Action.

Moreover, as discussed in Response #16, the Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops planned by Mahi Pono will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. As explained in the Agricultural and Related Economic Impacts report provided as Appendix I:

A short-term Water Lease would derail development of the Mahi Pono Farm Plan as well as any plan to convert the Central Maui lands to diversified agriculture because of the risk of not being able to farm for a long enough period to recover their planned investment. Conversely, the longer the term of the Water Lease, the greater the beneficial agricultural and economic impacts because of the certainty that comes from a long-term lease, which could encourage greater investment in long-term improvements. The State has the authority to issue a Water Lease with up to a 65-year term. However, the analysis used herein assumes issuance of the final proposed 30-year Water Lease. As mentioned, a longer term Lease would generate greater beneficial impacts.

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In other words, a lease of a short term, or even a potential series of shorter term leases, would not provide the security and incentive to implement the Mahi Pono farm plan as a diversified farm plan with a long-term commitment to agriculture. The uncertainty that would accompany a short term lease would alter the nature of the farming, as discussed in Response #17.

CULTURAL IMPACT COMMENTS

Comment 20: *Impacts to cultural resources and practices are inadequately described with little to no consideration of mitigation efforts beyond complying with the already binding 2018 CWRM D&O. The DEIS argues that available water will be limited due to existing Department of Hawaiian Homelands (DHHL) water entitlements and interim instream flow standard (IIFS) restorations ordered by the Commission on Water Resource Management (CWRM) in a 2018 Decision & Order (D&O). According to the DEIS, this 2018 D&O, which restored all or partial natural IIFS to 22 streams in the License Area, has the potential to "reduce or eliminate cultural impacts." OHA believes such a statement is continually misused throughout the DEIS to (2A) avoid cultural impact considerations for streams not covered by the D&O; and, (2B) ignore concerns regarding cultural access to the License Area access to the License Area*

Response 20: Section 2.1 of the Draft EIS describes the Proposed Action and its relationship to the CWRM D&O:

*Independent of the Proposed Action, on June 20, 2018, the CWRM issued its D&O setting IIFS for numerous streams and tributaries of streams in the License Area, which includes water originating and flowing from both State and privately owned lands within East Maui. The CWRM D&O establishes a quantity of water that must remain in each stream at specified locations. The CWRM D&O ordered full stream restoration for 10 streams and partial flow restoration on 12 additional streams. Therefore, the maximum amount of water that can be awarded through the Water Lease is what is available for diversion after the CWRM D&O is implemented. This is the premise of the Proposed Action.
(Footnote and reference omitted)*

The Draft EIS acknowledges that the CWRM D&O has the potential to mitigate impacts to taro farming, the regional environment, and freshwater ecosystems relative to the time when sugar was in cultivation and no such limits were imposed on stream diversions in East Maui. As noted in the HSHEP model (Appendix A) and in Section 4.2.1 of the EIS, "[f]rom a habitat availability perspective, the [CWRM D&O] does a good job at improving stream habitat over a wide range of streams within the License Area." The phrase "potential to reduce or eliminate this cultural impact" is only used in the context of streams that were diverted during sugar cultivation and

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then had their flows fully or partially restored under the CWRM D&O. The term “eliminate” can only apply to streams whose flows were fully restored. Hence, the extent to which stream diversions had restricted traditional and cultural practices up to the point that the CWRM D&O was implemented, such restrictions were partially or fully lifted. There is nothing in the context of how the phrase “potential to reduce or eliminate this cultural impact” is used to suggest that flow restoration through the CWRM D&O is anticipated to address the streams that were not covered by the CWRM D&O (i.e., the 12 non-petitioned streams). Moreover, the Cultural Impact Assessment (CIA) prepared by Cultural Surveys Hawaii was a regional study, and not limited to only the petitioned-streams. It CIA found that the CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, pages 4-158 to 4-159 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action as shown on pages 4-239 to 4-252.

We also note that the CIA, updated in the Final EIS to reflect a second round of consultation with those who had provided comments on the Draft EIS and raised specific issues related to potential impacts on traditional or cultural practices, does propose mitigation should the proposed Water Lease be issued. The proposed mitigation addresses issues related to stream flow as well as access. Furthermore, particularly with respect to access issues, the CIA reflects feedback provided by Mr. Ferreira and Mr. Tanaka of OHA. CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

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Comment 21: *The DEIS avoids cultural impact considerations for streams not covered by the D&O. Cultural practices and subsistence lifestyles unique to the communities in East Maui have a direct relationship with the health and abundance of native stream and estuarine life, as well as the region's overall environmental integrity. Meanwhile, as recognized in the DEIS and its appendices, even with the D&O in place, the proposed action could reduce available habitat units and result in lost mauka-to-makai connectivity for a substantial number of streams in East Maui not covered by the D&O. These streams are all ecologically interconnected through the amphidromous nature of the native species they support. According to the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) done as part of the DEIS, there is a potential for an 85% loss of habitat in streams not covered by the D&O when water is fully diverted. The proposed action at these streams would have a direct impact on native stream and estuarine life throughout the region that would in turn potentially limit or foreclose the perpetuation of cultural practices, the intergenerational transmission of cultural knowledge, and the maintenance of traditional subsistence lifestyles. The DEIS thus cannot reasonably characterize the D&O as somehow reducing or even eliminating all of the proposed action's cultural impacts. OHA recommends the DEIS provide a more detailed evaluation of the numerous cultural concerns and possible mitigation measures for streams not covered by the D&O.*

Response 21: We acknowledge that cultural practices and subsistence lifestyles that are unique to East Maui communities can be affected by the health and abundance of native stream and estuarine habitats in East Maui, as well as the region's overall environmental integrity. We respectfully disagree with your comment that the Draft EIS did not assess the cultural impacts of the non-petitioned streams. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream, but it has since been determined that Puakea is actually a tributary to Pa'akea Stream which was designated under the CWRM D&O for connectivity restoration.

With regard to the CWRM D&O, we reiterate that it was an effort independent of the Proposed Action to address historic stream diversions by the EMI Aqueduct System. Through its D&O, the CWRM sought to restore streamflow to taro streams, habitat streams, and to increase stream connectivity. The Proposed Action will abide by the flow restoration requirements of the CWRM D&O.

We concur that the CWRM D&O did not establish IIFS for all streams in the License Area that were historically and/or will continue to be diverted by the EMI Aqueduct System under the Proposed Action. Excluded from flow restoration consideration were 12 non-petitioned streams in the License Area as well as streams beyond the License Area, which are not subject to the proposed Water Lease. Note that although the CWRM D&O did not set new IIFS for the 12 non-

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petitioned streams, the CWRM did take those streams into account. See CWRM D&O at ii. Moreover, while the 12 non-petitioned streams were not assessed pursuant to specific petitions to establish IIFS, those streams are subject to the 1988 IIFS set for the East Maui streams. Please note that the CWRM, as is evident from its website, both from its own research and in conjunction with USGS, has information on the License Area streams, including the non-petitioned streams, which information has been made available to the BLNR. Furthermore, under the revocable permits, annual reports, and now quarterly reports, are submitted by EMI to the BLNR, which identify the total amount of water being diverted from License Area measured at Honopou Stream, i.e. water from both petitioned streams and non-petitioned streams. Hence, the 12 non-petitioned streams were included as part of the overall analysis of the EIS and associated technical studies. In terms of stream habitat, the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model provided as Appendix A analyzed those streams to assess changes in native amphidromous stream animal habitat with respect to stream diversions which is summarized in Section 4.2.1 of the EIS in the section covering East Maui.

As for the diverted License Area streams, including the 12 non-petitioned streams, the Draft EIS regards the original construction and subsequent operation of the diversion structures over the course of more than a century as providing historic context. Due to the passage of time, the environmental impacts emanating from those past actions cannot be evaluated with any certainty, as no studies exist from that time. The HSHEP model provided in EIS Appendix A, however, offers an opportunity to evaluate, within the limits of the model, the effect of hypothetically altering stream diversion amounts on habitats for stream animals, as measured in numerical Habitat Units (HU). While the HSHEP model does not address cultural impacts, a similar HSHEP model commissioned by the Division of Aquatic Resources of DLNR was used by the CWRM to relate HU resulting from streamflow restoration to providing additional opportunities for cultural and traditional gathering rights. As stated in the CWRM D&O at COL 61:

The restoration of stream flows in this manner is intended to both restore stream life and to provide additional opportunities for the exercise of customary and traditional gathering rights.

By evaluating a hypothetical full stream flow restoration of the 12 non-petitioned streams in the License Area, the HSHEP model was able to calculate the resulting HU. Interpreting that result would suggest that historic diversions of those streams had reduced stream habitats by 88.2%. The Proposed Action would not incrementally increase that impact, and in fact the overall HU under the Proposed Action retains almost 64% of the potential HU within the License Area streams. The text in the Final EIS has been revised to clarify that the Proposed Action does not cause the reduction in HU's in the non-petitioned streams but rather sustains the status quo, as shown pages 4-61.

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Since the Proposed Action would not incrementally increase habitat degradation in the 12 non-petitioned streams, there would be no basis for suggesting that it would, in turn, “*potentially limit or foreclose the perpetuation of cultural practices, the intergenerational transmission of cultural knowledge, and the maintenance of traditional subsistence lifestyles.*” By offering the HSHEP model evaluation of full stream flow restoration for the 12 non-petitioned streams, however, the Draft EIS provides information to the BLNR for consideration in issuing the Water Lease. Since the BLNR can impose limits and conditions on the Water Lease, it could, for example, impose mitigation requirements upon the lessee of the Water Lease. Please note, as discussed in Section 4.2.1 of the EIS, potential mitigation measures are presented based upon the HSHEP model.

The primary mitigation measure for the instream habitat lost to the water diversion is flow restoration. The intent of the HSHEP model is to quantify the flow restoration effect on the native stream species habitat. The HSHEP model addresses impacts to habitat, entrainment and passage. Given the 250+ diversions within the EMI Aqueduct System, incremental changes to each aspect of diversion amount on habitat, entrainment, and passage for each diversion individually and all diversion combinations would result in too many model results for rational use (the number of possible combinations with just one change at each diversion is far over a billion different results, $2^{250}-1 = \text{combinations}$). Once a specific scenario is determined such as the 2018 IIFS or the No Action Alternative, then the HSHEP model can be used to quantify the changes that occur.

From a technical perspective, there are more than 300 individual nodes (stream mouths, diversions, springs and sinks) in the EMI Aqueduct System. Potentially any of these diversions within the node group could (1) have different levels of water restoration mandated at the diversion location (2) could have engineering changes to increase fish passage and decrease larval entrainment and/or (3) have the sequence of water restoration or engineering changes include numerous different scenarios with for example, 50% water return on diversion 1, an engineering fix to eliminate a barrier on diversion 2, a 60 % water return and an engineering fix to decrease entrainment on diversion 3, and so on. This could result in many different scenarios. To be more specific on the number of potential iterative scenarios, there is a formula for the number of permutations = n^r . So, in a stream with 3 diversions, if we are interested different flow restoration levels 0 to 100% in 10% intervals, we get 11^3 which equals 1331 different scenarios. If we add a single engineering fix (2 options of no change and new design), we get 22^3 which equals 10,648 scenarios. Clearly, the number of possibilities increased quickly.

For example, there are 10 diversions on Nāili‘ili‘haele Stream. If we were interested in different flow restoration levels ranging from 0 to 100 in 10% intervals, we get $25,937,424,601$ scenarios. Twenty-five billion scenarios are far too many to reasonably understand or consider for management actions (and these vast number of scenarios does not even account for any engineer changes to those diversions to increase fish passage or decrease larval entrainment). In short, the number of permutations involved in considering all options for all diversions in the East Maui streams precluded a systematic optimization of all possible scenarios.

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With that understanding, the HSHEP model report presented general guiding concepts associated with flow modification and changes to diversion design to minimize barriers to passage and larval entrainment.

With respect to diversion amount:

- Regardless of the way the water was diverted, greater percentages of total streamflow diverted generally resulted in lower amounts of instream habitat for native stream species.

With respect to diversion location:

- When comparing the location of a diversion, diverting comparable amounts of water at higher elevation diversions was less damaging to instream habitat for native stream species than diverting that water at lower elevation diversions. In this case, as the diversion occurred further upstream in the stream, more natural stream flow recovered downstream of the diversion. Additionally, any water passing the diversion resulted in more instream habitat with unobstructed connection (no entrainment or passage issues) to the ocean.

With respect to a single diversion in comparison to multiple diversions:

- Similar to the previous statement, a single diversion at the upstream most diversion location capturing X amount of stream flow will result in more instream habitat than multiple diversions throughout the stream diverting the same amount of stream flow in total (sum of multiple diversion = X). The lower amount of total habitat under the partial water diversion at multiple diversions was the result of the compounding impact of entrainment/passage barriers at each division.

With respect to modifications of the diversion for improved passage and decreased entrainment:

- Improvements in diversion passage resulted in more suitable habitat at most flow levels.
- At lower flow restoration amounts, modifications to improve passage resulted in greater gains in suitable habitat than at higher flow restoration level.

For the native damselflies and invasive mosquito, a return to natural flow conditions should improve damselfly habitat and decrease mosquito habitat where these species use instream habitats. The potential beneficiaries were the endangered damselfly, *Megalagrion xanthomelas* and *Megalagrion pacificum*. Small gains in potential suitable habitat units occurred in these streams and restoration of flow to a more natural condition should directly benefit the species. The restoration of baseflow however will likely also improve habitat conditions for a number of introduced predator and competitor species of the native damselflies and thus may not in itself increase damselfly populations. It should be noted that although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with the concept controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the *Culex* mosquitos are crevice breeders and small pockets of water

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throughout the forest will still exist under any streamflow scenario. Second, Hawaiian streams are naturally flashy (i.e., they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many different levels of streamflow. It may be difficult to control *Culex* mosquito by increased streamflow alone.

As set forth in the HSHEP model report, the analysis resulting from the combination of field surveys and habitat modeling supports the flow restoration under the CWRM D&O 2018 IIFS in improving instream habitat conditions for native amphidromous stream animals. While suitable habitat is fundamental for a species' persistence and is the focus of the HSHEP model, it may not be the only thing that may affect species populations. Other factors, such as pollution, disease, or competition with introduced species, may also influence the observed distribution and densities of native animals. Yet understanding the natural distribution of animals without the presence of these additional factors is still important. From a habitat availability perspective, the 2018 IIFS does a good job at improving instream habitat over a wide range of streams within the License Area. As noted above, the 2018 IIFS results in 1,116,581 HU within the License Area, which is equivalent to 63.9% of the highest possible amount of HU within the License Area.

Overall, the CWRM D&O will restore approximately 84.3% of total HU available for native stream animals in the 33 streams in the License Area subject to the CWRM D&O. This is an increase of over 240,564 HU as compared to conditions modeled under full diversion for sugarcane production. It does so while seeking to balance instream and off stream uses of water. While it is understood and documented that natural stream animal habitats in the License Area will not be fully restored under the CWRM D&O and, therefore, under the Proposed Action, overall instream conditions would be far better than in the past.

Although the CWRM used its HSHEP model output in HU as a general indicator of "*creating additional opportunities for traditional and cultural practices*", this interpretation has severe limitations for actually understanding if any such opportunities can or would be manifested, available and accessible for engaging in such practices. Therefore, the number of HU gained by restoring streamflow cannot simply be equated to a measure of additional opportunities gained for traditional and cultural practices.

On the other hand, traditional and cultural practices are addressed by the Cultural Impact Assessment (CIA) included in Appendix F and summarized in Section 4.6. The CIA was prepared as a regional study that was not limited to only the streams that had new IIFS set by the CWRM D&O; the CIA considered the impacts of the Proposed Action on all License Area streams. Moreover, it was prepared to provide a historical perspective of cultural impacts associated with the EMI Aqueduct System to establish a baseline from which to discuss the incremental cultural impact emanating from the Proposed Action. The CIA provides a synopsis of anticipated impacts of the Proposed Action upon identified cultural resources and practices and offers mitigation recommendations gathered from the community and other consultant studies, as discussed in Response #20, above.

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With regard to your comment that the Draft EIS avoids discussion of cultural impacts stating that the CWRM D&O has the potential to reduce the Proposed Action's cultural impacts, the Draft EIS and CIA recognize that consideration of the CWRM D&O is part of the overall analysis. The CWRM D&O was an effort taken by CWRM to mitigate impacts from the stream diversions to taro streams, habitat streams, and to increase stream connectivity. These efforts have the potential to mitigate impacts to taro farming, the regional environment, and freshwater ecosystems. However, it is understood and noted that the CWRM D&O did not eliminate all impacts that result from the Proposed Action. Hence, we do believe that the CWRM D&O was reasonably characterized.

The CIA has been supplemented based on feedback provided on the Draft EIS. Section 4.6 of the Final EIS has been revised to describe the cultural practices and related impacts for each stream within the License Area, including those not subject to the CWRM D&O as shown on pages 4-171 to 4-254. With respect to potential regional impacts, in the CIA included with the Draft EIS, as discussed in Response #20 above, Cultural Surveys Hawai'i recommended that qualified professionals who possess an understanding of stream flow mechanics, water diversion, and climate statistics within the License Area address certain questions that were raised during consultation. Questions such as "how much water is being diverted at each location of intakes, ditches, dams, pipes, and flumes?", "how much water is being diverted from East Maui to Central Maui?", and "is climate change accounted for?" Since the publication of the Draft EIS, CSH has reviewed the other technical studies prepared for the EIS and added that in addition to the recommendations provided by the other technical studies, that the Proposed Action include monitoring and public reporting of stream flow volumes. Note that no additional cultural impacts or resources were identified by commenters on the Draft EIS or those who participated in the supplemental consultation on the CIA.

Finally, your mention of estuarine life is among several comments on estuaries received on the Draft EIS. In response, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on the pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33

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subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opulua, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83.

Comment 22: *The HSHEP is arguably also incomplete as it states that it evaluated all streams within the License Area except for one, Puakea Stream. OHA believes the reasoning for its exclusion from HSHEP analysis is not made clear. Absent a valid reason, OHA requests that impacts to culturally significant flora and fauna species at Puakea Stream be assessed, as leaving it out renders the cultural impact portion of the DEIS incomplete.*

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Response 22: As discussed in Response 21 above, Puakea stream was assessed in the HSHEP model provided in Draft EIS Appendix A. Puakea Gulch/stream was identified in the Draft EIS as a separate stream, but this has been corrected in the Final EIS as it was determined that Puakea stream is a tributary of Pa'akea Stream, which has clarified in Section 1.3.4 of the Final EIS as shown on pages 1-16.

Comment 23: *The HSHEP does further note that entrainment of aquatic larvae at stream diversions remains an issue that contributes to the loss of habitat units for many flora and fauna species dependent on stream flow. Interestingly, the DEIS does acknowledge this point by indicating that habitat units may be increased through the modification of diversions to reduce entrainment. However, the DEIS does not appear to offer such alternatives and again relies on the D&O to reduce or eliminate cultural impacts. OHA thus recommends that alternate diversion designs be considered to reduce entrainment.*

Response 23: We wish to offer a clarification to your statement on the “loss of habitat units for many flora and fauna species dependent on stream flow.” The HSHEP model’s HU calculation is based on specific stream animals and, while the HU based on these animals can be interpreted to indicate the overall health of stream ecosystems, including other stream animals inhabiting them, the study does not specifically address stream flora.

With regard to diversion modification alternatives, note that the Proposed Action does not propose any physical diversion modifications. With respect to modifications that need to be done in order to restore streams under the CWRM D&O, that work is being done to comply with the CWRM D&O and is required irrespective of the issuance of the proposed Water Lease and is thus not within the scope of the Proposed Action. However, as a part of understanding how the existing EMI Aqueduct System affects stream habitats, the HSHEP discusses the loss of HU resulting from entrainment of stream animals. As noted on p. 61 of the HSHEP report:

Therefore, only major diversion conditions were modified in the HSHEP model and no specific passage or entrainment modifications were applied except of the effects provided by increased water passing downstream at the major diversions. Any action or modification of the diversion to decrease entrainment would increase the total restored habitat units without any additional water released to the stream.

The Proposed Action would not additionally modify diversions beyond what is necessary for compliance with the CWRM D&O. Nevertheless, the HSHEP study’s disclosure of the potential for stream diversion modifications to reduce entrainment is offered for consideration by the BLNR in its subsequent Water Lease deliberations.

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The HSHEP analysis accounted for the likely amount of upstream and downstream entrainment and passage barriers at each diversion and how these impacts would change with respect to changes in amounts of streamflow at the diversions. The model also quantified the accumulation of entrainment and passage impacts where multiple diversions were found on a single stream. Specific upstream and downstream entrainment and passage impacts for each diversion are documented in Appendix 2a of the HSHEP study.

The HSHEP's primary purpose is to quantify the flow restoration effect on the native stream species habitat. Thereby, the HSHEP model addresses effects to habitat, entrainment and passage at diversions by applying varying levels of streamflow. Due to common sense technical challenges to the HSHEP model, not all scenarios were presented or analyzed. To provide context, there are approximately 388 individual diversions in the EMI Aqueduct System. Potentially any of these diversions could: (1) have different levels of water restoration mandated at the diversion location; (2) could have engineering changes to increase fish passage and decrease larval entrainment; and/or (3) have the sequence of water restoration or engineering changes include numerous different scenarios with for example, 50% water return on diversion 1, an engineering change on diversion 2, a 60 % water return and an engineering change on diversion 3, and so on. This could result in many different scenarios - too many for meaningful review, and each potential adjustment would not alter the overall findings as presented in the HSHEP Model. To be more specific on the number of potential iterative scenarios, there is a formula for the number of permutations = n^r . So, in a stream with 3 diversions, if we wanted to present different flow restoration levels, 0 to 100% in 10% intervals, we get 11^3 which equals 1,331 different scenarios. If a single engineering adjustment is added (2 options of no change and new design), the result is 22^3 , which equals 10,648 scenarios.

For example, there are 10 diversions on Nā'ili'ilihaele Stream, which is one of the non-petitioned streams. Applying different flow restoration levels 0 to 100 in 10% intervals, as discussed above, there are approximately 25,937,424,601 scenarios. Twenty-five billion scenarios are far too many to reasonably understand or consider for management actions. Also note that no engineering changes to those diversions to increase fish passage or decrease larval entrainment were considered in the example. Thus, the number of permutations involved in considering all options for the 300+ diversions in the East Maui streams precludes a systematic optimization of all possible scenarios.

In other words, the difficulty lies in the complexity and the number of possibilities created by those questions regarding the restoration of the non-petitioned streams while attempting to determine the answers to best balance the offstream uses related to the Proposed Action. Therefore, while questions regarding restoration of the non-IIFS streams are valid, the questions

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need to be constrained to a smaller subset of possibilities to make optimization testing possible. With that caveat stated, some general guiding concepts can be concluded to minimize impacts to the non-petitioned streams from stream diversions.

With respect to diversion locations and amount for non-petitioned streams:

1. Regardless of the way the water is diverted, greater percentages of total streamflow diverted generally result in lower amounts of instream habitat for native stream species. However, when diversion amounts are similar among scenarios,
 - a. Diverting comparable amounts of water at higher elevation diversions is less damaging to instream habitat for native stream species than diverting that water at lower elevation diversions.
 - b. Returning comparable amounts of water at the higher elevation diversions and allowing it to flow downstream without additional diversion will result in more instream habitat than partial water diversion at all diversions due to the compounding impact of entrainment at each diversion.

With respect to modifications of the diversion for improved passage and decrease entrainment:

2. Improvements in diversion passage result in more suitable habitat at most flow amounts.
3. At lower flow restoration amounts, modifications to improve passage result in greater gains in suitable habitat than at higher flow restoration amounts.

Please note that Section 4.2.1 of the Final EIS has been revised to include a general discussion more specific to the impacts and mitigation measures associated with the non-petitioned streams, and how stream flow restoration will influence HU in the License Area as shown on pages 4-61 to 4-67

Finally, we take exception to your comment regarding the Draft EIS' alleged reliance on the CWRM D&O to reduce or eliminate cultural impacts. As explained above in Response 21, the incremental cultural impacts that the Proposed Action would have beyond the implementation of the CWRM D&O are not anticipated to be significant. With respect to cultural impacts that were identified along the License Area streams through the CWRM proceedings and the EIS, particular cultural impacts and resources were identified as shown in Table 4-13 to 4-15 in Section 4.6 of the Final EIS as shown on pages 4-171 to 4-239.

With respect to potential impacts to taro farming, the specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui

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(Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili‘ula, Pua‘aka‘a, Pa‘akea, Waia‘aka, Kapā‘ula, Hanawī, Makapīpī, and Waiohue. Cultural Surveys Hawaii noted that these streams were addressed through the CWRM D&O proceedings. With respect to impacts to freshwater ecosystems, CSH identified the potential for impacts to Wahinepe‘e, Puohokamoā, Ha‘ipua‘ena, Honopou (Puniawa Tributary), Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili‘ula, Pa‘akea, Kapā‘ula, Hanawī, Makapīpī, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua‘aka‘a Tributary, and Waia‘aka. And CSH also noted that these streams were addressed through the CWRM D&O proceedings. To address the potential for impacts to these resources/practices, similar to the recommendation noted above, CSH recommends that the Proposed Action include monitoring and public reporting of stream flow volumes, and that EMI's current system of flow meters and totalizers that are reported to CWRM on a monthly basis be maintained and upgraded as needed in order to report accurate information on stream flow and diversion amounts to the community.

With respect to cultural sites, CSH acknowledged that no studies had identified any burial sites within the License Area. Nevertheless, CSH recommended that any personnel involved in access, maintenance, or any other related activities within the License Area be informed of the possibility of inadvertent cultural finds, including human remains, and that in the event any such sites are inadvertently discovered within the License Area, those discoveries should be reported immediately to the State Historic Preservation Division (SHPD). Moreover, CSH recommended that in the event that iwi kūpuna and/or cultural finds are encountered, consultation with lineal and cultural descendants of the area should be conducted. CSH also recommended, as a proactive measure, that there be an access policy for cultural practitioners within the License Area, similar to the access policy in use for hiking groups. Any such policy would need to be developed in consultation with the State (as landowner of the License Area), and the Water Lease lessee, and in consideration of applicable law related to traditional and customary Native Hawaiian rights. It is noted that in issuing the CWRM D&O, the CWRM identified the minimum criteria to be satisfied in order for a traditional and customary right to be protected by the constitution and State law. See CWRM D&O pages 242 through 245, citing the Supreme Court's holding on this subject in *State v. Pratt*, 127 Hawai‘i 206, 277 P.3d 300 (2012).

Toward addressing the cumulative cultural impact of the Proposed Action, the Draft EIS includes a CIA that, among other areas, delves into the cultural history of the License Area. This was done to establish the cultural context in which the Proposed Action would be implemented. And, as mentioned previously, the CIA has also been supplemented in the Final EIS to describe the cultural practices and related impacts for all streams within the License Area, including the non-

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petitioned streams. Refer to the updated Section 4.6 in the Final EIS, included as pages 4-171 to 4-254.

In addition, while the HSHEP model has its limitations for inferring the creation of additional opportunities to exercise traditional and cultural practices, it did not only calculate HU for the Proposed Action under the CWRM D&O, but also provides a basis for comparative analysis by analyzing a "Natural Condition" where no stream diversions occur, a "Full Diversion" scenario, where all diversions were diverting 100% of available low flows, and the "No Action" alternative where no Water Lease is issued and only 30% of the remaining flow is diverted after compliance with the CWRM D&O is diverted. These analyses provide several alternative scenarios for BLNR to consider in its Water Lease deliberations.

Comment 24: *On a final note, although OHA certainly does not oppose ethically responsible scientific analyses and understands the important role these studies serve, scientific findings are not always absolute and are often refined through follow up testing, monitoring, or research. In this particular case, the claim that the D&O has the "potential" to reduce or eliminate cultural impacts is not a definite nor are the findings of the HSHEP. As findings note a "potential" and not a guarantee, OHA believes that follow up monitoring on water quality, stream flow, and flora and fauna life should be arranged prior to issuance of a water lease. Such monitoring could perhaps be integrated into the watershed management plan to be collaboratively developed by A&B/EMI and the BLNR pursuant to HRS 171-58(e).*

Response 24: Understanding that the scope of your comment regarding scientific analyses and cultural impacts pertains to the HSHEP model, we respond as follows. As stated in our Response #21, the HSHEP offers an opportunity to evaluate, within the limits of the model, the effect of hypothetically altering stream diversion amounts on habitats for stream animals, as measured in numerical Habitat Units (HU). While the HSHEP model does not address cultural impacts, a similar HSHEP model commissioned by the Division of Aquatic Resources of DLNR was used by the CWRM to relate HU resulting from streamflow restoration to providing additional opportunities for cultural and traditional gathering rights. The following citations from the CWRM D&O express the CWRM's rationale for believing that its decision will increase opportunities for the exercise of traditional and customary gathering rights:

- *Maintenance of fish and wildlife habitats to enable gathering of stream animals and increased flows to enable the exercise of appurtenant rights constitute the instream exercise of "traditional and customary native Hawaiian rights" (FOF 656)*
- *...the H90 flow is believed to provide suitable conditions for grown, reproduction, and recruitment of native stream animals as well as protection*

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- of traditional and customary native Hawaiian gathering rights, which are affected by the size of native animal populations in a stream (COL 28)*
- *The Commission's expectation is that restoring flows to streams that are spread out geographically will: 1) provide greater protection against localized habitat disruptions; 2) produce a wider benefit to estuarine and near-shore marine species; and 3) result in more comprehensive ecosystem function across the entire East Maui watershed. (COL 33)*
 - *The restoration of stream flows in this manner is intended to both restore stream life and to provide additional opportunities for the exercise of customary and traditional gathering rights. (COL 61)*

Regarding your comment on “follow up testing monitoring and research”, independent of the proposed Water Lease, the CWRM D&O calls for monitoring. CWRM requested that BLNR authorize the DAR to monitor whether or not the flows implemented for East Wailuāiki of H₉₀ and full restoration of West Wailuāiki have resulted in any difference in the biology or ecology of these two streams as compared to the other. See CWRM D&O at 270.

Moreover, the CIA provides a synopsis of mitigation recommendations gathered from the community and other consultant technical studies and made recommendations that include follow-up monitoring activities. Specifically, CSH recommends that the Proposed Action include monitoring and public reporting of stream flow volumes. As discussed in Section 4.6 of the EIS, the CWRM D&O requires EMI to report on changes in stream diversions and ditch settings as irrigation requirements increase. Currently, EMI also maintains a system of optical encoders with float tape and data loggers within its ditch system. CSH also recommends that the EMI Aqueduct System continue to be maintained and upgraded as needed in order to report accurate information on stream flow and diversion amounts to the community.

Your suggestion for the incorporation of follow up monitoring on water quality, stream flow, and flora and fauna life into the watershed management plan required under HRS § 171-58 for a Water Lease is acknowledged. Section 2.1 of the Draft EIS described the State's action with respect to the minimum content requirements of a watershed management plan at that time. However, this section of the EIS has been revised to take into account the BLNR's actions on October 11, 2019 under agenda item D-2, where BLNR approved the minimum content requirements for a watershed management plan as shown on pages 2-2 to 2-4.

Comment 25: *The DEIS ignores concerns regarding cultural access to the License Area. The DEIS lacks any explicit consideration of the proposed action's potential impacts to access by*

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cultural practitioners, who may wish to gather or visit resources and sites in the License Area. There is only a hint of discouragement to unregulated public access to the License Area in the DEIS, where it states that unauthorized personnel could present a potential vector for invasive species and traditional resources could be over consumed. OHA argues that since traditional customary practices are occurring in the area and that these rights are protected by the State of Hawai'i Constitution, then A&B/EMI should minimally commit to developing a procedure for addressing cultural access and keeping individuals informed of activities occurring in the License Area. This procedure should be in place even if A&B/EMI defers access responsibility to the State.

Response 25: Your comment that native Hawaiian traditional and customary practices are protected under Article XII, section 7 of the Hawai'i Constitution is acknowledged. It states, "*The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the rights of the State to regulate such rights.*"

In explaining this provision, the framers of Article XII, section 7 also clarified that, while the State has the power and obligation to protect native Hawaiian traditional and customary practices, the State also has the power to regulate those rights: "Your Committee did not intend these rights to be indiscriminate or abusive to others. While your Committee recognizes that, historically and presently, native Hawaiians have a deep love and respect for the land, called aloha aina, reasonable regulation is necessary to prevent possible abuse as well as interference with these rights." Stand. Comm. Rep. No. 57, reprinted in 1 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 639.

As discussed in Response #21, the CIA has been updated to include a discussion regarding impacts to access by cultural practitioners and recommended mitigation measures, as summarized in Section 4.6 of the Final EIS, provided on pages 4-239 to 4-252. These recommendations were informed by consultation with Mr. Ferreira and Mr. Tanaka of OHA. Regarding a means of keeping individuals informed of activities occurring in the License Area, CSH recommends that the access policy for the License Area include access by cultural practitioners via a similar process in use for hiking groups or via a consultation list of willing practitioners as suggested in comments received by Mr. Ferreira and Mr. Tanaka of OHA. Any access policy will need to be developed in consultation with the landowner (the State) and the Water Lease lessee and in consideration of applicable law related to traditional and customary Native Hawaiian rights as discussed in Section 4.6 of the Final EIS. However, it should be noted that EMI has confirmed that no individual who has approached EMI requesting access to the License Area for traditional and customary practices has ever been denied access.

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Comment 26: *With only 15 of 136 people responding to the cultural impact assessment consultations, with potentially many more who were and are reluctant to participate in the process, it is likely that many cultural users of the area are not accounted for and that potential access impacts may be much greater than anticipated. Accordingly, the DEIS should consider an array of approaches to mitigate potential impacts to practitioner access and use of the License Area, such as the maintenance of a consultation list of willing practitioners that can be used to communicate with and accommodate these individuals and their networks. Notably, this may help A&B/EMI develop a respectful relationship with cultural practitioners rather than creating an adversarial lessee-versus-cultural practitioner situation.*

Response 26: CSH conducted two separate rounds of community consultation; one prior to the publication of the June 2019 CIA, and second in response to comments received on the Draft EIS. CSH reported that Mr. Ferreira and Mr. Tanaka of OHA provided feedback during that second round of consultation.

Although extensive consultation efforts were made in connection with the preparation of the June 2019 CIA, as detailed in the CIA, few individuals or organizations agreed to participate (only three individuals agreed to be interviewed in connection with the preparation of the June 2019 CIA), thereby leaving CSH with little option but to review the extensive testimony that had been submitted to CWRM in connection with the multi-year IIFS proceedings (which started in 2001 and had concluded in June 2018 with the issuance of the CWRM D&O). This rich source of information was valuable but of somewhat limited utility because it was based upon concerns about impacts that were reviewed and potentially addressed through the issuance of the CWRM D&O. CSH's second round of consultation was done in response to comments submitted on the Draft EIS that included the June 2019 CIA report. This consultation was targeted to those who had raised specific issues of a cultural impact nature. Although CSH sought to consult with some 14 individuals who wrote letters in response to the Draft EIS, only five were willing to engage in consultation to further inform the CIA.

During the preparation of the Draft EIS, CSH contacted a total of 136 parties including OHA, the State Historic Preservation Division (SHPD), the County of Maui, other agencies, Department of Hawaiian Homelands (DHHL) beneficiaries, Native Hawaiian Organizations (NHOs) and knowledgeable community members. NHOs consulted included: Aha Moku o Maui, Inc. (Ke'eaumoku Kapu and Kyle Nakanelua); Kuloloi'a Lineage – I Ke Kai o Kuloloi'a (Les Kuloloi'a); Waiehu Kou Phase 3 Association (Roy Oliveira); Moku o Kaupō (Jade Alohalani Smith); and Aha Moku o Kahikinui (Donna Sterling). Of the 136 parties consulted, a total of 15 people/agencies responded to the consultation letter. Three people participated in formal interviews. CSH initiated its outreach effort in November 2017 which included letters, phone

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calls, emails, and in-person interviews. Below is a list of individuals and agencies who shared their *mana‘o* (thoughts, opinions) and *‘ike* (knowledge) about the License Area:

1. Dr. Kamana‘opono Crabbe, Ka Pouhana – OHA
2. Pomaika‘i Crozier, Conservation Manager – Pu‘u Kukui Watershed Preserve
3. Skippy Hau, *Kama‘āina* (native born) and Aquatic Biologist – Division of Aquatic Resources – State of Hawai‘i
4. Garrett Hew, *Kama‘āina*, Upcountry Maui farmer, and former East Maui Irrigation (EMI) employee
5. Robert Hobdy, Retired naturalist and forester
6. Roslyn Lightfoot, Director – Alexander & Baldwin Sugar Museum
7. Kyle Nakanelua, *Kama‘āina*, Aha Moku o Maui, and *kalo* (taro; *Colocasia esculenta*) farmer
8. Jerry Sakugawa, Upcountry Maui farmer
9. Sandy Takeshita, Upcountry Maui farmer
10. Mahealani Wendt, Member of Nā Moku Aupuni o Ko‘olau Hui
11. Mavis Oliveira-Medeiros, *Kama‘āina* of Hāna
12. Dawn Lono, Long-time resident of Hāna
13. Shane Sinenci, holds the County Council seat for the East Maui residency area
14. Dorothy “Aunty Dottie/Kumu Kamalu” Kaho‘okele and ‘Ohana, *Kama‘āina* of Nāhiku
15. Moses “Mokey Boy” Bergau, *Kama‘āina* of Nāhiku

Following public review of and comment on the Draft EIS, CSH conducted additional outreach to 14 individuals or organizations including OHA, DHHL, Ha‘ikū Community Association, Maui Tomorrow Foundation, Hui o Nā Wai ‘Ehā, Mr. Daniel Grantham, Mr. Cody Nemet, Mr. Jordan Tabura, Mr. James Sagawinit, and the Medeiros ‘Ohana, all of whom had provided comments on the Draft EIS specific to the CIA. Although these individuals and agencies had provided comments about the June 2019 CIA, several did not respond to CSH’s request for consultation to further explore the issues raised in their comment letters. However, five parties were willing to engage in consultation:

1. Kamakana Ferriera, Lead Compliance Specialist, OHA
2. Wayne Tanaka, Public Policy Advocate, OHA
3. Lafayette Young, Board Member, Ha‘ikū Community Association
4. Lucienne de Naie, Vice-President, Maui Tomorrow Foundation and member, Sierra Club of Hawai‘i, Maui Group
5. Albert Perez, Executive Director, Maui Tomorrow Foundation

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Your suggestion that the Water Lease lessee maintain a consultation list of practitioners who may serve as a communication intermediary between the lessee and any practitioners with constitutionally protected rights is appreciated. This suggestion has been incorporated into Section 4.6 as shown on pages 4-239 to 4-252 related to mitigation measures and recommendations. We understand that a claimed right is constitutionally protected as a customary or traditional native Hawaiian right under article XII, § 7 of the Hawai‘i Constitution, or §§ 1-1 or 7-1, HRS if the following is shown: a. the practice must be related to extended family needs; the purpose must be to fulfill a responsibility related to subsistence, religious or cultural needs of one’s family or extended family; b. the traditional or customary native Hawaiian practice must be traceable to at least November 25, 1892; c. the practice cannot be for a commercial purpose; and d. the manner in which the practice is conducted must be consistent with the tradition and custom and the practice must be conducted in a respectful manner. *See State v. Pratt*, 124 Hawai‘i 329, at 349-55, 243 P.3d 289, at 309-315 (App. 2010).

Comment 27: *With an established procedure to handle cultural access, A&B/EMI or the State should also consider signage that encourages cultural use pursuant to the State of Hawai‘i Constitution, Article XII, as not to have them unduly harassed by any form of onsite security or enforcement personnel. In any case, the DEIS must address what may be significant and unaccounted-for impacts to practitioner access under the proposed action.*

Response 27: Your comment is acknowledged and your suggestion is consistent with the recommendations in the CIA. We concur that with an established procedure to handle access into the License Area by those who have rights under Article XII of the Hawaii Constitution, effective signage could encourage such access. A part of such an established procedure could be as discussed in our Response #25. As recommended by CSH, cultural practitioners could gain access via a process currently established for hiking groups or via a consultation list of willing practitioners. CSH further recommends that any access policy be developed in consultation with the landowner (the State) and the Water Lease lessee and in consideration of applicable law related to traditional and customary Native Hawaiian rights. As mentioned previously, EMI has confirmed that no individual who has approached EMI requesting access to the License Area for traditional and customary practices has ever been denied access. Nevertheless, this approach would minimize the potential for undue harassment by on-site security or enforcement personnel, and is consistent with the suggestions offered by Mr. Ferreira and Mr. Tanaka of OHA during supplemental CIA consultation, and incorporated in the updated CIA, as discussed in our Response #25.

With respect to your comment about signage, CSH in the updated CIA, based upon feedback from Mr. Ferreira and Mr. Tanaka of OHA, recommends the installation of signage at common public access points to the License Area along Hāna Highway. This recommendation has been

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added in Section 4.6 of the Final EIS as shown in pages 4-239 to 4-252 related to mitigation measures and recommendations.

HISTORIC PRESERVATION COMMENTS

Comment 28: 3. *HRS 6E, Historic Preservation, Compliance.* As the State Historic Preservation Division (SHPD) is tasked with administering HRS 6E, SHPD comments were sought when the EISPN was published in 2017. Per the January 25, 2017 SHPD letter provided in Appendix E of the DEIS, SHPD originally could not make a determination of the water lease's impact on historic properties, and thus recommended that an archaeological inventory survey (AIS) be completed in accordance with an AIS plan (AISP). However, following several SHPD consultations with the contractor, SHPD rescinded its request for an AIS in a letter dated October 6, 2017, as SHPD was led to believe that no ground disturbing work would take place as part of the water-lease issuance. OHA questions this portrayal of the proposed water lease as having no ground disturbing work since the DEIS states that the water lease will allow for A&B/EMI to maintain and repair existing access roads and trails that are part of the EMI Aqueduct System. Such repair work often includes ground disturbing activities.

Response 28: Issuance of the Water Lease is not anticipated to affect any historic property, aviation artifacts, or burial site. As discussed in Draft EIS Section 4.5 (Historic and Archaeological Resources) the Proposed Action does not involve any new construction or significant ground disturbance within undisturbed areas within the License Area. The Proposed Action continues the use of the EMI Aqueduct System for the transport of surface water, and allows the lessee or its permittees, to maintain and repair existing access roads and trails long-used as part of the EMI Aqueduct System. Moreover, as discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7, under the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System. Moreover, this was explained to SHPD as discussed in the Archaeological Literature Review and Field Inspection provided as Appendix E of the EIS ("Additional information regarding the proposed Water Lease was provided to the SHPD including the understanding that the proposed Water Lease will not involve any significant ground disturbance within undisturbed areas.").

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Comment 29: *The specific details (i.e., locations, staging areas, construction access routes, and scope of work) of the maintenance and repair work are not detailed within the DEIS. Including these improvements without a clear scope in the DEIS arguably could lead A&B/EMI to think that these actions do not require HRS 6E review. OHA requests that details be provided regarding proposed maintenance and repair work as withholding the scope and breadth of such actions may mislead the evaluation of impacts to historic properties.*

Response 29: The EMI Aqueduct System includes approximately 50 miles of tunnels, 24 miles of ditches, 13 inverted siphons, approximately 388 intakes, six reservoirs, and 62 miles of private roads. Maintenance is done on an as-needed basis and therefore a detailed schedule of maintenance locations is not included in the EIS. The majority of repair and maintenance of the EMI Aqueduct System will take place at the ditch itself and the nature of the work is described above in Response # 28. It is also anticipated, based upon decades of maintenance and repair work, that any such work and related staging would be conducted in close proximity to the ditch and therefore long-accessed areas and that would prevent disturbance of the surrounding areas of the forest. Access routes to such sites, it is expected, would similarly be over well used roads and trails.

General maintenance has minimal impact on the surrounding areas because existing roads and trails used to access the EMI Aqueduct System have been in place for over a century and used for such purposes. This was explained to SHPD as discussed in the Archaeological Literature Review and Field Inspection provided as Appendix E of the EIS ("Additional information regarding the proposed Water Lease was provided to the SHPD including the understanding that the proposed Water Lease will not involve any significant ground disturbance within undisturbed areas.").

Comment 30: *The DEIS goes on to state that should there be inadvertent cultural finds, including human remains, in the License Area, that these discoveries will be immediately reported to SHPD. OHA notes however that simply contacting SHPD does not ensure compliance with relevant rules governing inadvertent discoveries. Procedures for inadvertent discoveries, other than a burial site, is governed by HAR 13-280. These rules require that work in the immediate area halt and that nothing will be removed until SHPD can evaluate the find. Depending on the findings, SHPD may require a mitigation plan. Procedures for inadvertent human burials are governed by HAR 13-300-40. These rules also require that work in the immediate area halt, but further requires that the coroner and the police department be contacted in addition to SHPD. OHA thus recommends that the DEIS include a clause that ensures compliance with these rules.*

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Response 30: The Cultural Impact Assessment included as Appendix F of the Draft EIS contained a mitigation recommendation that *"any personnel involved in access, maintenance, or any other related activities within the License Area be informed of the possibility of inadvertent cultural finds, including human remains. In the event that any potential historic properties are inadvertently discovered within the License Area, these discoveries should be reported immediately to the State Historic Preservation Division (SHPD). In the event that iwi kūpuna and/or cultural finds are encountered, consultation with lineal and cultural descendants of the area is also recommended."* This is also reflected in Section 4.6 of the Draft EIS.

We acknowledge that HAR § 13-280 provides the Rules Governing General Procedures for Inadvertent Discoveries of Historic Properties During a Project Covered by the Historic Preservation Review Process, and that HAR § 13-280-3 sets forth the specific procedures to be followed for inadvertent discoveries. These procedures apply to the discovery of a historic property, other than a burial site, during the course of work on a project that has already gone through the historic preservation review process, and include the requirement that construction shall be halted in the immediate area and the historic property should not be disturbed any further, and that no item shall be moved from the ground at the discovery location without the SHPD's approval, to prevent damage to the historic property. HAR § 13-280-3 further provides that if the property is deemed significant, an appropriate mitigation plan shall be jointly developed by the SHPD and agency or person undertaking the project.

We further acknowledge that HAR § 13-300-40 addresses the process for the inadvertent discovery of human remains and requires notification to SHPD, the medical examiner or coroner from the county in which the inadvertent discovery occurred, and the County police department. This is discussed in further detail in the LRFI included in Appendix E of the EIS as well as Section 4.5 and 4.6 of the EIS (instructing that should human skeletal remains be identified within the License Area as part of the Proposed Action, any work in the immediate vicinity of the remains should be stopped and the discovery should be immediately reported to the SHPD (during regular business hours) or to DOCARE (outside of regular business hours) and to the Maui Police Department (to include notification to the medical examiner) in accordance with HAR § 13-300-40).

Comment 31: *OHA looks forward to reviewing a revised DEIS that addresses our concerns regarding alternatives, cultural impacts, and HRS 6E compliance. If needed, OHA is willing to engage in any future discussions or consultations. Should you have any questions, please contact our Lead Compliance Specialist, Kamakana C.Ferreira, at (808)594-0227, or by email at kamakanaf@oha.org.*

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Response 31: Thank you for your participation in the Draft EIS review process. The Draft EIS has been revised to incorporate substantive comments received during the consultation and review process, including substantive comments from OHA. Moreover, additional outreach consultation with Cultural Surveys Hawai'i and OHA has been included in the updated Cultural Impact Assessment included as Appendix F to the Final EIS. As evident by our responses to OHA's comments herein and the comprehensive nature of the Draft EIS regarding alternatives, cultural impacts, and HRS 6E compliance, there is no need for a second, or revised, Draft EIS. The Draft EIS that was published included extensive information on the Proposed Action as well as its effects in East Maui, and anticipated effects on Upcountry Maui and in the Central Maui agricultural fields at full implementation of the Mahi Pono farm plan. Although some additional information is provided in the Final EIS for clarification or in response to Draft EIS comment letters, no significant new information is included that was not already addressed in the Draft EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.³ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

³ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION
400 RODGERS BOULEVARD, SUITE 700
HONOLULU, HAWAII 96819-1880

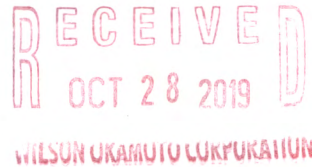
JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

IN REPLY REFER TO:
AIR-EP
19.0120

October 25, 2019

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 South Beretania Street, Suite 400
Honolulu, Hawaii 96826



Dear Mr. Matsukawa:

Subject: Draft Environmental Impact Statement (DEIS)
Proposed Lease (Water Lease) for the Nahiku, Keanae, Honomanu, and Huelo License Areas

The State of Hawaii, Department of Transportation, Airports Division, has reviewed the subject DEIS and has no comments.

Thank you for the opportunity to review the DEIS. If there are any questions, please contact Mr. Herman Tuiolosega, Head Planner, at 838-8810.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ross M. Higashi".

ROSS M. HIGASHI
Deputy Director -- Airports

c: Mr. Ian Hirokawa, Land Division, Department of Land and Natural Resources



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Mr. Ross Higashi
Deputy Director - Airports
Department of Transportation
State of Hawai‘i
400 Rodgers Blvd., Suite 700
Honolulu, HI 96819

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Higashi:

Thank you for comments dated October 25, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The State of Hawaii, Department of Transportation, Airports Division, has reviewed the subject DEIS and has no comments.*

Response 1: We acknowledge that the State of Hawai‘i Department of Transportation – Airports Division has no comments at this time.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.



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RECEIVED
OCT 07 2019
WILSON OKAMOTO COMPANY

September 27, 2019

To Whom It May Concern,

This is to acknowledge receipt of your letter requesting a review of an environmental assessment (EA) or environmental impact statement (EIS). The Environmental Center at the University of Hawai'i at Mānoa, which for a time was linked to the Water Resources Research Center (WRRC), has been discontinued. As a result of the closure of the Environmental Center, we regret that WRRC no longer has the capacity to review environmental documents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Giambelluca'.

Thomas Giambelluca
Director

Attachment

2540 Dole Street, Holmes Hall 283
Honolulu, Hawai'i 96822
Telephone: (808) 956-7847
Fax: (808) 956-5044

An Equal Opportunity/Affirmative Action Institution



WILSON OKAMOTO

C O R P O R A T I O N

INNOVATORS • PLANNERS • ENGINEERS

10238-02

September 23, 2019

Sir / Madam

University of Hawaii at Manoa

Water Resources Research Center

2540 Dole Street

Holmes Hall 283

Honolulu, HI, 96822

Subject: Notice of Availability
Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū
and Huelo License Areas

Dear Sir / Madam:

Notice of the availability of the Draft Environmental Impact Statement (DEIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas will be published in the September 23, 2019 issue of the Office of Environmental Quality Control’s *The Environmental Notice*. Written comments received in response to this DEIS will be considered in the preparation of the Final EIS (FEIS). The deadline for comments is November 7, 2019. Please address comments to:

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 S, Beretania St., Suite 400
Honolulu, HI 96826

with a cc to:

Mr. Ian Hirokawa
Land Division, DLNR
1151 Punchbowl St. Room 220
Honolulu, HI 96813

Or, via email to: waterleaseeis@wilsonokamoto.com and ian.c.hirokawa@hawaii.gov

All comment letters must be post-marked, or email received, by the deadline date to be included in the Final EIS.

The DEIS is available for review on the OEQC Website at the following URL address:

http://oeqc2.doh.hawaii.gov/The_Environmental_Notice/2019-09-23-TEN.pdf

We appreciate your interest in this environmental review process.

Sincerely,

Earl Matsukawa, AICP

Vice President, Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant



WILSON OKAMOTO
 CORPORATION
 INNOVATORS • PLANNERS • ENGINEERS

10238-02
 September 23, 2019

Sir / Madam
 University of Hawaii at Manoa
 Environmental Center
 2500 Dole Street
 Krauss Annex 19
 Honolulu, HI, 96822

Subject: Notice of Availability
 Draft Environmental Impact Statement
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Sincerely,

Earl Matsukawa, AICP
 Vice President, Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
 A&B / EMI, Applicant



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Thomas Giambelluca
Director
Water Resources Research Center
University of Hawai'i at Mānoa
2540 Dole Street, Holmes Hall 283
Honolulu, HI 96822

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Mr. Giambelluca:

Thank you for comments dated September 27, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *This is to acknowledge receipt of your letter requesting a review of an environmental assessment (EA) or environmental impact statement (EIS). The Environmental Center at the University of Hawai'i at Manoa, which for a time was linked to the Water Resources Research Center (WRRC), has been discontinued. As a result of the closure of the Environmental Center, we regret that WRRC no longer has the capacity to review environmental documents.*

Response 1: We understand that the Environmental Center at the University of Hawai'i at Mānoa, which for a time was linked to the Water Resources Research Center (WRRC), has been discontinued and no longer have the capacity to review environmental documents.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for

10238-04

Letter to Mr. Thomas Giambelluca

Page 2

September 3, 2021

review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Albert Perez <director.maitomorrow@gmail.com>
Sent: Thursday, November 7, 2019 10:19 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Comments on Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas
Attachments: A&B DEIS MTF comments_Final.pdf

Aloha,

Attached please find our comments on the subject DEIS. Please confirm receipt.

Mahalo,
Albert

--

Albert Perez
Executive Director
Maui Tomorrow Foundation
www.maui-tomorrow.org



Maui Tomorrow Foundation
55 North Church St, Suite A-4
Wailuku, HI 96793

Wilson Okamoto Corporation
1907 South Beretania Street, Suite 400
Honolulu, Hawai`i 96826
waterleaseeis@wilsonokamoto.com

November 7, 2019

Attention: Mr. Earl Matsukawa, Project Manager

Mr. Ian Hirokawa
1151 Punchbowl St.
Honolulu, HI 96813
ian.c.hirokawa@hawaii.gov

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas

Dear Mr. Matsukawa and Mr. Hirokawa,

Following are the comments of Maui Tomorrow Foundation (MTF) re. the Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. Maui Tomorrow is part of a coalition that has long requested environmental review for the removal of such large quantities of water - which is a public trust resource held in trust for all the peoples of Maui - from public lands. Unfortunately, now that the process is underway, we are disappointed to see that the DEIS mischaracterizes many important facts, glosses over others, and incorrectly attempts to portray the resumption of major diversions of millions of gallons of stream water every day as a benign act. This is not consistent with public representations by Mahi Pono that they want to be transparent, they don't need much water, and will take only what they need.

The type of information that must be included in the Draft EIS is specified in the content requirements established by Hawai'i Administrative Rules (HAR) Sections 11-200-16 and 11-200-17. If these sections are not complied with, the document will not disclose enough information to government agencies, the general public, stakeholders, and decision-makers about the anticipated impacts of the project, alternatives to the proposed action and feasible measures that might be taken to mitigate potential impacts, sufficient to allow informed decision making.

Spirit of the Environmental Impact Statement Law, Chapter 343, HRS
HRS 343-1 provides, in pertinent part, that

“ . . . the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole. It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.”

In addition, HAR 11-200-19 provides that

“In developing the EIS, preparers shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail of the statement.”

The 2,700-page length of this DEIS is excessive, to the point where it frustrates the legislative purpose of public participation (as expressed in HRS 343-1 and HAR 11-200-19 above) during the review process. As a result, the benefits that should accrue to “all parties involved and society as a whole” are diminished. In addition, due to its length, the legislature’s goal of ensuring that “environmental concerns are given appropriate consideration in decision making” is thwarted as well. The EIS should be made more concise, and should clearly describe the impacts of a resumption in stream diversion upon the environment.

This DEIS is more than just deficient; in its current form, there are so many inadequacies that it would be better to start over. The DEIS does not discuss much of the information that we asked to be included in our comments on the EISPN. As detailed in our latest comments below, this document fails to meet the standards for an environmental impact statement. It does not incorporate known information about the natural and cultural resources of this area, and it relies on misleading assumptions for its conclusions. The DEIS fails to disclose the amount of water taken from each stream, omits essential maps, and glosses over known impacts that have long been raised by various participants in this process. These deficiencies need to be corrected; the current DEIS should be withdrawn, and a new DEIS should be released for another full DEIS public comment period.

Following is a list of our concerns. Please make sure to respond in a point-by-point fashion in the Final EIS, as required by HRS 11-200-22(c)(1).

1. Scope of the Draft EIS

The Project Summary statement contains several inaccuracies that need to be corrected, as follows:

“The Water Lease . . . will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui ...”

This is misleading, because it is not a complete representation of the facts. A reader of this statement could come away with the idea that ALL of Upcountry Maui water needs are dependent on the granting of a lease. This is incorrect, because

- a) Upcountry water needs are also supplied by wells
- b) Upcountry water needs are predominantly supplied by surface water obtained outside of the Lease Area, and treated at the Piiholo and Olinda water treatment facilities.
- c) These surface water treatment facilities have storage reservoirs that can supply the Upcountry system for periods when there is no rainfall and little stream flow.
- d) Upcountry water needs have historically used water from the Kamole water treatment facility only during drought periods, or when the other water treatment facilities are offline for maintenance.
- e) The Maui County Department of Water Supply regularly uses its authority to declare several stages of water shortage, each of which results in conservation of water Upcountry, thus extending the supply.
- f) It is well known that as long as the County relies on surface water, periodic water shortages and shortage declarations will continue. A statement to this effect is included in the draft Maui County Water Use and Development Plan.
- g) Development tunnels in the Lease Area will continue to produce millions of gallons of water every day that will enter the EMI Aqueduct System, even during droughts; it will also continue to flow with or without a Lease.

The EIS needs to include and analyze data, available from CWRM, that provides monthly surface water production figures for the Piiholo, Olinda and Kamole surface water treatment plants, as well as the monthly pumpage reports for all of the wells that serve Upcountry Maui.

According to Stearns & McDonald, "East Maui has few perennial streams in proportion to its size, and they are chiefly small due to the water sheds being underlain with permeable lavas. Forty tunnels recover 6 million gallons a day of high-level water in East Maui and all from structures other than dikes."

The EIS needs to include and analyze data showing the amount of water obtained from all development tunnels and/or wells in the Lease Area. This water, which will continue to flow, even during drought, with or without a Lease, can be used to supply MDWS and/or the Mahi Pono fields in Central Maui. This information should be incorporated into evaluation of all Alternatives.

Similarly, the following statement in the Project Summary is potentially misleading: "The Water Lease . . . will allow for the continued operation of the EMI Aqueduct System . . . to deliver water . . . for the Nahiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System." The EIS needs to provide a diagram of the relationship of the Nahiku Water System to the EMI Aqueduct System, showing exactly where it obtains its water from, and demonstrating, if possible, why it would be impacted by failure to get a lease. For example, on East Makapipi Stream, there is a separate development tunnel inside the Koolau tunnel that gathers water and pipes it OVER the water that is flowing in the Koolau tunnel to a pipe that serves the Nahiku system. This water is not commingled with the Koolau tunnel water, and will continue to flow regardless of whether the proposed lease is obtained.

2. The DEIS document needs to acknowledge that "existing conditions" and operations of the East Maui Irrigation (EMI) system for over a century already have multiple impacts on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. These current conditions need to be discussed, and viable

alternatives to the status quo presented, in the alternatives section of the DEIS. The scope of alternatives discussed in the EISPN is too narrow to comply with the standards set out in HAR 11-200.

3. The EISPN states in many places that the Proposed Action will maintain existing conditions, and that no significant impacts are anticipated. This is a serious flaw that will invalidate the entire EIS if it remains unchanged. Currently, Alexander and Baldwin/East Maui Irrigation/Hawaiian Commercial & Sugar (A&B) is using less water than they were using prior to the end of sugar operations; it may be years before they use much more. In terms of environmental impacts of the Proposed Action, it does not matter what their stated future intent is. 'Opae and other stream life currently have access to habitat that currently exists. The Proposed Action will reduce or eliminate this existing habitat. The impacts of the proposed action must be analyzed in the current context.
4. Similarly, kalo farmers currently have water available for kalo that will be reduced or eliminated by the Proposed Action. The many impacts of a reduction in available water, as compared to existing conditions must be analyzed.
5. Many people at the EISPN hearings on February 22nd and 23rd, 2017 testified regarding positive impacts that they have already seen from increased stream flow resulting from the cessation of sugar operations. The EIS must discuss the following:
 - a) information about known impacts that occurred in the past, which are likely to occur again if water is diverted as it was in the past
 - b) present impacts that are continuing, such as watershed degradation as a result of invasive species having gained a foothold because of low stream flows.
6. Although the DEIS discusses a public auction of the proposed lease, it is clear that the DEIS is written from the perspective of EMI obtaining that lease. If this EIS is truly intended to be able to serve for a multiple bidder auction, many more scenarios need to be included, including the possibility of bids from government entities such as the state or Maui County, bids from nonprofits, water utilities, water authorities, or bids from other for-profit companies. The DEIS needs to discuss whether other potential bidders would need to comply with HRS 343 on their own, and if so, how the timing of submission of any associated HRS 343 documents would be coordinated to achieve the public benefits associated with making a public auction competitive.
7. Since the proposed action of issuing a lease is an agency action, the EIS also needs to discuss why it would not be more appropriate for the Board of Land and Natural Resources to prepare the EIS and consider all relevant factors associated with a multiple bid auction scenario.
8. The DEIS is inconsistent with regard to how the terms "lease area" and "license area" are used. In the Summary on page i, reference is made to "Issuance of one long-term lease of State land from the Board of Land and Natural Resources pursuant to Hawai'i Revised Statutes (HRS) Section 171-58(c) for the "right, privilege, and authority to enter and go upon" the State-owned Nāhiku, Ke'anae, Honomanū, and Huelo License Areas ..." Judging by this language, the "lease area" is comprised of four "license areas". However, this relationship is not maintained throughout the document; the relationship between "lease" and "license" is reversed in several sections. For the sake of clarity, our comments will refer to the "lease area" as being comprised of the four separate "license areas". The

relationship between the terms “lease area” and “license area” needs to be clearly described in the EIS, and this relationship must be maintained throughout the document in order for it to make sense.

9. We also note that the responses to our comments on the EISPN for this project were difficult to make sense of. Although we sent in 14 pages of very specific comments, the responses were very generic, and did not directly correspond to many of the points we raised. As stated previously, this frustrates the purpose and the spirit of the EIS law. As required by HRS 11-200-22(c)(1), the Final EIS must include a) a Point-by-point discussion of the validity, significance, and relevance of comments; and b) a discussion as to how each comment was evaluated and considered in planning the proposed action.
10. The Listing of Permits and Approvals section states that issuance of the Lease “would ... lead to construction activities such as expanding the KAP and building facilities in support of diversified agriculture in Central Maui.” The EIS needs to analyze the many impacts of other types of potential agricultural construction that could be facilitated by the issuance of a Lease, such as farm dwellings and/or farm labor dwellings in the event of creation of subdivisions or condominium property regimes.
11. The EIS needs to discuss the condominium property regimes that have already been created, or could be created in the future, within the land that was sold by A&B to Mahi Pono’s various LLCs. It also needs to discuss the potential impacts that would result if such dwellings were to obtain access to diverted surface water from East Maui.
12. The EIS needs to provide evidence, such as chain of title from Kingdom days, showing how each parcel of land in the lease area, as well as in the central Maui agricultural area was legally acquired, and is now the property of A&B, EMI, and/or Mahi Pono.
13. The EIS needs to identify the underlying ownership of every portion of every ditch and tunnel in the lease area, and provide evidence, such as chain of title from Kingdom days, showing how each parcel of land in the lease area, as well as in the central Maui agricultural area was legally acquired, and is now the property of A&B, EMI, and/or Mahi Pono.
14. The EIS needs to provide a clear explanation and diagram(s) of the management and financial relationships among A&B, EMI, the Canadian Public Sector Pension Investment Board, Trinitas, Pomona Farming, and Mahi Pono. It also needs to evaluate exogenous events like natural disasters, or changes in ownership or management objectives in any one of the above mentioned entities, could impact the natural, economic, cultural and/or social environment on Maui.
15. Over the past few months, huge plumes of dust have been seen over Central Maui, which are generated by Mahi Pono farming equipment. The EIS should provide information regarding the expected farming practices of Mahi Pono, which will be facilitated by issuance of the proposed Lease, and how they will impact air quality and offshore ecosystems, including sediment-sensitive species.
16. Under the DEIS Section 3 – Alternatives, Subsection 3.3 - No Action (page 3-6), Line 6, reads:

“However, under the **1938 agreement and a related calculation involving isohyet analysis of rainfall patterns**, it is understood that approximately 30% of the water in the License Area streams is derived from the privately-owned lands. Therefore, the EMI Aqueduct system could continue to divert approximately 30% of the water available from the Collection Area, plus...”
(emphasis ours)

The 1938 agreement, Section VIII, paragraph (4), by and between the Territory of Hawaii and East Maui Irrigation Company, Limited dated March 18, 1938, reads as follows:

“Long term average water yield” shall be the arithmetical average annual water yield which would have been diverted from any given drainage area under consideration had the aqueduct system, at the time of the determination, been in existence during the entire period in which

water records are available for such area, and shall be determined jointly by the Territory's and the Company's hydrographers based on all available applicable water measurements and long term rainfall records;"

The DEIS statement "that approximately 30% of the water in the License Area streams is derived from the privately-owned lands" is a significant water resource baseline metric. As such, the variables utilized to determine the "30%" are important to understand and verify. They need to be provide in this DEIS.

The 'related calculation involving isohyet analysis of rainfall patterns' referred to in Subsection 3.3 should be made available for public review and comment in this DEIS. This calculation should include the yield calculations as defined in the 1938 agreement: "...the arithmetical average annual water yield which would have been diverted from any given drainage area under consideration..."

This EIS needs to make available for public review and comment a detailed parcel listing & associated map(s) of the License Area's 'privately owned lands' from which the 30% right to the stream water flow referred to in Subsection 3.3 is derived.

This EIS should explicitly document the private land owner's source of rights, if any, to divert License Area stream flow for private purposes, in light of the adoption of the State Water Code and the mandated protection of the Public Trust.

The EIS should state what volume percentage of the asserted 'privately owned lands' water rights are defined and documented as "appurtenant water rights", as well as the volume of water yield ascribed to this water right.

The EIS should state what percentage of these private lands hold water rights only to the usufruct (riparian right) in each of the Lease Area Streams, as well as the volume of water yield ascribed to this particular water right.

17. The EIS should examine and disclose the relative local financial impact of a foreign-owned (California) company, in comparison to the relative local financial impact of granting the lease to either a Hawaii-based company, a Maui Water Authority, or a local nonprofit organization.
18. The EIS should describe the expected fair-market cost of water to the County that would be provided via the Wailoa Ditch/Tunnel. It should also describe the potential impacts to the Upcountry domestic water users if the cost of the small annual percentage of Upcountry water (about 26% annually) that is supplied by the lease area were to rise significantly. Similarly, the EIS should evaluate the impact on Upcountry farmers if this cost were to rise significantly.
19. The DEIS states that 7.1 million gallons per day of Upcountry Maui's water comes from the East Maui irrigation aqueduct system. This is VERY misleading, since only about 26 percent on an annual basis (depending on the year) is coming from the lease areas that are being analyzed in the EIS document. The rest is coming from other Mahi Pono lands, which are outside the proposed lease area, and are not the subject of this EIS. This statement needs to be corrected based on actual numbers based on CWRM water usage reports.

20. Impacts to Hawaiian Homelands Water Supply

§11-200-16 HAR Content requirements: The environmental impact statement shall contain an explanation of the environmental consequences of the proposed action. The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, a statement shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

The current DEIS contains no specific information regarding the water reservation amounts from the East Maui lease area needed by DHHL. This information is now available and was publicly offered by DHHL staff at the Oct 9, 2019 BLNR meeting. These specific legally protected water reservations should be INCLUDED in the DEIS, and Mahi Pono water use plans adjusted accordingly to reflect this amount, in order for the public and agency comment process to be based upon accurate information. The DEIS also assumes in the Executive Summary that Mahi Pono can utilize the East Maui Water until the time that DHHL needs its reservation.

The Mahi Pono Farm Plan figures presented in appendix I estimate that 68 mgd of East Maui stream water will be available for Mahi Pono crops after 22.7 percent system losses, and 7.1 mgd for the Maui County DWS system. No water is allotted for DHHL in the Mahi Pono Farm Plan calculations.

A discussion of whether it is legal for A&B/Mahi Pono to assume that the DHHL “water reservation” can be utilized by Mahi Pono until it is “needed by DHHL” should also be included in the DEIS. It is our understanding that the Waiola o Molokai vs DHHL case dealt with a similar situation, and the DHHL prevailed.

There is no indication in the DEIS how the Mahi Pono Farm Plan will be adjusted to accommodate the 11.5 mgd of East Maui Water that DHHL is reserving. The EIS should plainly discuss this, as well as whether such adjustment would be based upon a need for more water over the first few years of planting, and less water when crops are established, using regenerative agricultural methods, as was envisioned in the 2018 CWRM Decision and Order:

“115. The estimated water requirements will change not only because some potential partners and lessees are expected to rotate multiple crops that could potentially have different crop coefficients but also because water requirements could change significantly through the use of regenerative agricultural methods.”

If Mahi Pono Water demand is expected to decrease over the years, as suggested by the CWRM 2018 review, a timetable for restoration of non-IIFS streams in the Huelo Lease area should also be discussed in the EIS.

21. Lack of Accurate Information re. the Viability of the Mahi Pono Farm Plan

- The EIS should acknowledge that Mahi Pono has no track record of successful farming under Maui conditions.

A&B's SEC filings inform their shareholders of the risk that plans for diversified farming on their Maui lands may not work out, even given the Company's long history of farming. A&B's 2015 SEC filing states:

"The Company is currently evaluating several categories of replacement agricultural activities in the transition to the diversified model, including but not limited to energy crops, agroforestry, grass finished livestock operations, diversified food crops/agricultural park, and orchard crops. There is no assurance that the Company's replacement agricultural activities will be economically feasible or improve the Agribusiness segment's operating results."

The EIS needs to provide the same disclaimer, and should not predict the entire success of Mahi Pono farming operations based on how much East Maui water is sent to Central Maui.

- The EIS needs to provide accurate information about the benefits of Central Maui farming. The numbers provided for proposed Mahi Pono profits and past performances of HC&C sugar do not seem logical:

(Executive Summary, page v) "Mahi Pono farm plan is projected to generate more than 338 pounds per year of crops, generating \$155.9 million per year in annual food sales and \$329.5 million per year in combined direct and indirect sales." This would mean each pound of crop brought a return of \$461,242. The EIS needs to describe what kind of crop would bring this type of return, or correct what appears to be an obvious error in the calculation.

Table 6 in Appendix I lists "recent sugar" payroll of \$68,000,000 a year. HC&S had 675 workers when they announced that sugar would shut down in 2016. Did those workers earn an average of \$100,740 a year (\$68 mil divided by 675)? The EIS needs to provide a factual basis for this claim, and all claims, made in the document.

- The potential "recent sugar profits" presented in Table 6 of Appendix I also needs additional information.

A&B's SEC filings (10K reports) show a very different range of "profits" from 2009 to 2015 - the most recent era of sugar growing. In only 4 of those 7 years did the sugar operations show a profit (2010-2013.) The other three years showed sizable losses. The DEIS says that all these years (2008-2013) had poor crop yields due to low rainfall, but 2014 and 2015 also showed poor returns. The DEIS needs to discuss this evidence that water availability is not the only factor that determines crop success in Central Maui. Only one year (2011) had a profit of \$22 mil. The average of the 4 profitable years was \$14.9 mil. The figures in the EIS should reflect accurate amounts, not cherry pick one promising year.

- A&B's 2015 10-K statement (filed with the Securities & Exchange Commission) acknowledges that the four state lease areas supplied "approximately 58 percent of the irrigation water used by HC&S" and "A&B also holds rights to an irrigation system in West Maui, which provided approximately 15 percent of the irrigation water used by HC&S over the last ten years." This would indicate that 27% of irrigation water came from A&B wells.

- The EIS needs to include a list and map of the A&B/Mahi Pono wells available to help irrigate the Mahi Pono fields and the latest chloride tests and pumping abilities of each of those wells. The map should also depict the historical and prospective areas that can be irrigated using well water.
- The EIS states that Mahi Pono's farm plan will use less water than the HC&S sugar operations, and provides elaborate tables in Appendix I. The Mahi Pono Farm Plan is one plan, which includes around 34,000 acres irrigated by both East Maui and West Maui stream waters.

The EIS content rules do not allow for segmentation of separate parts of the same project. The 4,000 acres of fields irrigated by West Maui Water should be included in the overall analysis of how much water is needed from which source to have a viable Mahi Pono Farm Plan.

The EIS needs to clearly describe the overall Mahi Pono Farm Plan, and indicate what amounts and proportions of water for the farm plan will come from East Maui streams, West Maui streams and Mahi Pono wells.

22. Public Trails:

a) The draft EIS is incomplete because it does not include an inventory of roads and trails in the Ko'olau Forest Reserve.

HRS 264 (Public Highways and Trails) protects public right-of-way on roads and trails owned by the state. When the Ko'olau forest reserve was created, all roads and trails in the forest reserve became protected rights-of-way. The draft EIS needs to be extended to show the protected roads and trails in the Ko'olau Forest Reserve.

HRS 171-35 (Lease provisions) requires leases to protect rights-of-way and access to other public lands. The draft EIS needs to be extended to show how the proposed water lease protects rights-of-way and access to other public lands.

The Hawaii Supreme Court has ruled (1908 19 H. 168) that the lease of public land can not affect a public right-of-way existing across it.

2) The draft EIS is incomplete because it does not include an inventory and history of roads and trails on East Maui Irrigation land.

HRS 264 (Public Highways and Trails) requires that historic roads and trails are protected rights-of-way. The draft EIS needs to be extended to show which historic roads and trail are protected.

HRS 115 (Public Access to Coastal and Inland Recreational Areas) requires public rights of way to be provided at reasonable intervals to inland recreational areas. Many parts of the Ko'olau Forest Reserve are land-locked by East Maui Irrigation property. The draft EIS needs to be extended to show public rights-of-way across EMI property to the Ko'olau Forest Reserve.

3) The Division of Forestry and Wildlife, in their December 19, 2016 letter, included in the draft EIS, says, "Thus the Division recommends that the areas to be conveyed for a water license be done so through a land agreement that is limited to the infrastructure required

for maintenance and conveyance of water, and that any terms of any agreement established for the delivery of water ensure unrestricted public access to the reserves and any state owned roads and trails.” The DEIS needs to address the positive impacts of implementing this recommendation as part of a considered Alternative action.

23. Stream and Ocean Assessment (appendix B)

Appendix B and the DEIS conclude that East Maui stream flows don't affect conditions for marine life in East Maui, and that East Maui has the wrong ocean conditions to have substantial fish populations. Appendix B offers these conclusions even though it includes no survey of ocean fish, and measures water chemistry at only 7 of the 36 streams in the lease area. Kumupono Assoc. study of East Maui: “Wai o ke Ola – He Wahi Mo'olelo no Maui Hikina” was prepared for A&B / EMI in 2001, and provides much historic and contemporary discussion of the robust presence of marine life along east Maui coasts and longtime dependence of East Maui communities on the sea for food supplies. The connection of fresh water stream flows to algae that feeds marine life is well established. The conclusions of Appendix B are erroneously used throughout the DEIS to justify the “lack of impacts” from EMI's proposed Alternative 1: diverting all the East Maui streams to the extent permitted by the 2018 CWRM D&O.

The EIS needs to acknowledge that an increase of diversion from present levels will impact ocean fisheries, describe those impacts, and propose mitigations.

24. Flora and Fauna Review (Appendix C)

This brief (4 days supposedly covering 33,000 acres on the ground and 1 day in the air) drive-by review of flora and fauna is entirely inadequate to inform decision makers of the impacts of the proposed action.

In addition, the following deficiencies in the DEIS need to be corrected:

None of the Endangered damselfly populations seen by DAR surveys in 2005-06 were seen. Are they no longer found in the 33,000 acre area, or were they just missed by the superficial review?

No plant list was included in the survey report.

The Survey does not refer to baseline data available from the extensive 1985 mapping of the East & West Wailuaiki stream basin area that was done as part of a Proposed Hydroelectric plant EIS (Kepler, 1985)

The Flora and Fauna survey also included the 30,000 acres of potential farm lands (referred to as the “use area”)in the 5 day visit and did a poor job of describing impacts there.

It was not clear if the gulches in the “use area” were surveyed - they often serve as habitat areas.

No acoustical survey for native bats was done at either survey location.

In section 5.2.3, the survey reported that no reptiles or amphibians were detected, but hikers regularly encounter a very small frog at Hanawi stream near the Wailoa ditch.

In section 6.1.1 of Appendix C the consultants conclude that under the proposed action (30-year lease) "Vegetation would remain substantially the same" in the state Lease Area. Given that Citizens have watched invasive species such as melastomes, Job's tears, gingers, African Tulip and other pests spread substantially through the Lease Area over the past 30 years of access hikes, while the density and variety of native species diminish, the EIS needs to change this conclusion, acknowledge this impact, and provide adequate mitigation.

The EIS needs to address what types of mitigation would be needed to make sure that a 30-year lease would not result in the disappearance of most native species in the 1,000 to 2,000 ft elevations in the Lease Area.

The EIS should have far more detailed information, and provide evidence before declaring that a 30-year extension of the current management style will result in "no impacts."

The East Maui Watershed Partnership includes the Lease area lands on their maps , but only actively manages of East Maui lands above 3,000' elevation, which is above the Lease Area. The EIS needs to make this fact clear.

The public waters diverted by the EMI systems are the product of two factors: a) natural rainfall, and b) the watershed lands that receive the rainfall and discharge it into springs and streams. The quantity and quality of future stream flows will depend upon the health of the surrounding watershed lands. The EIS needs to examine the impact of each Alternative on these flows.

In section 6. of Appendix C, the consultants conclude that the proposed action will have no Impacts- because "no habitat removal or loss is proposed..."

The EIS ignores the well documented fact that dewatered streams over time lead to the decimation of native ecosystems and flora and fauna.

The EIS proposes no mitigations to improve watershed health other than some mechanisms to prevent introduction of more invasive species on equipment or supplies.

The Appendix C survey provides no guidance for any restoration activities in the Lease Area, which is widely done in other EIS documents that are involved with projects, like this one, that will, by law, trigger future management plans.

Appendix C and the DEIS make the erroneous assumption that 140 years of EMI use and management has had no impact on the substantial loss of native flora and fauna on public lands in the Lease Area. This assumption needs to be corrected to reflect known studies that prove otherwise.

Section 6.2 of Appendix C concludes that the No Action alternative (no lease awarded) would mean that it would likely not be viable for EMI to maintain the ditch system. The EIS needs to include supporting information for this conclusion. It also needs to further explore the beneficial impacts of

the No Action alternative on native stream life, offshore fisheries, cultural use, recreational use, and aesthetic use.

The EIS needs to discuss and analyze the possibility of others such as County or State maintaining portions of ditch system for a much-reduced level of diversion. The idea is simple dismissed as “too speculative” at this time, although the Maui Board of Water Supply has issued a report after investigating the topic.

EIS needs to discuss the implications of the fact that EMI controls the 4 levels of ditch system west of the lease area, which are connected to the East Maui ditch system, but not affected by the lease decision.

Section 6.3 concludes that the Reduced Water alternative (alternative 2) would result in more ditch maintenance required and “more human activity in area and greater chance of potential for negative impacts.” This section also concludes (with no proof offered) that “increased water flows in the stream would likely have very little impact on native land-based flora and fauna” and that “Impacts on aquatic fauna (damselflies, etc.) would vary by stream.” The EIS offers no proof that either of these conclusions is true, yet they are offered as a rationale to decision makers to support the Alternative 1 lease.

Appendix C refers to a future Management Plan for the Lease area that will be done by the State of Hawaii for the lease lands as part of any future lease agreement. The lease requirements found in HRS 171-58 specify that A&B/Mahi Pono need to jointly prepare a management plan with the State:

“(e) Any new lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan.”

Appendix C - “Assessment of Terrestrial Flora and Fauna” makes absolutely no reference to any need for restoration or management of the public lands in its analyses or recommendations. The DEIS clearly quantify the impacts of a long term lease, and must evaluate and mitigate those impacts.

Section 6.5 discusses Alternative ownership/ Management of the ditch system and lease area- and concludes that such management “would have effects identical to those described in the “proposed Action” on Terrestrial Flora-Fauna. The DEIS needs to include analysis of increased investment in watershed management that could come with a new “ownership” model.

Section 6.6 dismisses the Greater Public Access alternative (smaller lease area) and concludes that greater access would impact flora and introduce more alien species and impact habitat of native birds. The DEIS needs to analyze the beneficial impacts of increased access that results in greater restoration/management activities in the watershed lands, as has been the case in various areas on Maui that manage public access.

Section 7 offers Avoidance & Minimization measures such as :

- Biological monitor during maintenance in waterfall /cliffside areas
- Wash and inspect equipment before maintenance
- inspect any materials used for maintenance
- monitor ESA damselflies- work with USFWS
- training for onsite staff to recognize endangered species
- sensitivity to i'iwi nests during tree trimming
- use of barbless strand for top wire of fences to avoid bat injuries

While these would be a step forward from current conditions, there is no accountability for these practices actually being employed. Take the example of fencing mentioned. Thousands of acres of Mahi Pono land have recently been fenced, some of which has stands of trees that could serve as potential endangered bat habitat. All of the fencing observed has barbed wire on its top strand, which is detrimental to bat survival. Will all this be changed only if the lease is granted?

25. Historic Resources Assessment (Appendix E)

DEIS consultants have misrepresented East Maui Lease conditions to SHPD, after SHPD initially requested an AIS be done. The Action was described as “involving no ground altering activities” in order to be exempted for performing any ground based Archaeological Inventory Survey.

The 3-day field visit of 21 intakes on the EMI system cannot be held up as any proof that historic sites are not present either on state or EMI lands. The Fig 47 map in Appendix E indicates that 8 of those intakes were located on EMI land. Mahi Pono has informed the public that if they secure 30-year leases they plan to invest \$2 mil in ditch repairs. Other repairs and maintenance are needed on roads and ditch trails. A number of intakes on fully restored streams still need to have construction work undertaken. All of this ground altering construction activity has the potential to affect cultural and/or historic sites.

These are all secondary impacts of the 30 Year Lease being granted. SHPD should be fully informed of the secondary impacts and proposed activities in an area with no previous Archaeological review, and a full AIS should be completed,

EMI maintenance activities associated with the leases will take place both on State and EMI land, and both should be included in a full AIS as part of the EIS process.

The EIS needs to include ground surveys of the roads and trails found in the lease area, which are also historic properties. Many stone paved trails are found in the East Maui Lease area, but these are not mapped or referred to in Appendix E.

The Proposed action will involve, as secondary impacts, extensive mechanical clearing of these same roads, as well as EMI ditches and intake areas. It will also include the agreed upon modification of intakes to restored streams in the Lease Area ordered by CWRM.

The EIS cannot meet the HAR 11-200-16 content requirements “to discuss all relevant and feasible consequences of the action” if it ignores the fact that these secondary impacts will occur as part of the granting of a 30-year lease to access state lands and maintain EMI ditch system and trails.

Whether these actions occur on state lease land or on EMI lands, our State Historic preservation laws would require an Archaeological field survey, to determine the presence or absence of historic properties, if the agency was aware of the true nature of the implications of the 30-year lease.

None of these sites have been recorded: Patsy's Minks family (Takemoto's) lived in the Waihinepe'e area and the same area included the legendary pohaku that gave the valley its name when it sheltered an escaping Ali'i wahine. This pohaku is near an EMI access road. The historic review also ignores historic sites located in Mahi Pono fields, like the Papanene Heiau in the Spreckelsville area and the cultural practice associated with the site. A&B operates a construction dumping ground adjacent to the heiau remains. No archaeological work has been done on the site.

These are just a few examples of why the EIS is not complete, and cannot be found to have discussed and mitigated all impacts, without the addition of an AIS.

Due to lack of management of heavily diverted dry stream beds over the years, storm surges have uprooted large trees along stream banks and carried them downstream, where they put historic kalo lo'i, house platforms and other structures at risk. None of these historic properties have been surveyed or recorded in the lease area, except by volunteers. After 140 years of diversions, it is time for EMI to undertake a proper historical survey. The EIS needs to include this information, analyze potential impacts, and propose appropriate mitigation.

Unintended destruction of Hawaiian historic sites also impacts native Hawaiian cultural practice, which the EIS should also discuss and mitigate by directly involving East Maui communities in historic site preservation activities. Aha Moku Council representatives also refer to historic sites in the state or EMI lands surrounding the EMI ditch system, and Aha Moku representatives for Hamakua and Ko'olau moku should be part of the AIS fieldwork process.

26. Cultural Impact Assessment (appendix F)

The EIS does not fully acknowledge the impact that past and proposed reduced stream flows have had on the native stream life and marine life that is so directly connect with the ability of Native Hawaiians to engage in traditional cultural practice of fishing and gathering in East Maui.

Appendix F, the Cultural Impact Assessment (CIA), concludes that as long as Stream Flow standards are met in the East Maui streams subject to the 2018 Water Commission decision, all other streams can be diverted with no impacts to traditional Hawaiian cultural practices. It also concludes that the East Maui coasts do not have reefs, and therefore do not support related marine species, even though information in Kama'aina interviews mentions the importance of stream flows to the abundance of ocean fisheries and related cultural practices of fishing and gathering. This conclusion does not reflect generational knowledge, or marine life and stream life studies from East Maui found in the statements of numerous East Maui kama'aina included in Appendix F.

Hawaiian cultural users whose interviews are in the CIA agree: increased stream flows are needed to support stream and marine life in enough abundance to allow traditional gathering from both streams and ocean coastlines. The EIS does not include recent studies of marine fish populations in East Maui or recent interviews with East Maui residents. These residents inform us they have

observed that the recent increase in East Maui flows due to the closure of sugar, with stream diversions reduced to 20-25 mgd, has already resulted in increased fish populations in East Maui.

The EIS needs to include studies on current fish populations, and needs to discuss how this trend of increasing fish populations that support traditional Hawaiian gathering practices can continue, rather than not mention that it is happening.

The EIS also needs to evaluate the Cultural impacts of diverting the 12 streams in the Huelo lease area that were not evaluated in the CWRM IIFS proceeding. These streams have had regular flows for the past two years, allowing residents of the surrounding communities a chance to gather native stream life.

27. Mitigation Measures

The mitigation measures proposed on page viii need to be strictly enforced; for example, it only takes one exception to introduce an invasive species.

In order to make them effective, all mitigation measures must be mandatory. For example, the wording “A monitor should have familiarity with plants of the area” needs to be changed to say “A monitor shall have familiarity with plants of the area.” Also, instead of “recommending” consultation with lineal and cultural descendants of the area in the event that iwi kūpuna and/or cultural finds are encountered, such consultation needs to be required.

The DEIS also needs to present a detailed plan – to include funding - about how these mitigation measures will be enforced.

28. The Draft EIS needs to clearly indicate how much diverted surface water, water from development tunnels, and/or water from wells will be available to meet A&B’s diversified ag needs from areas outside (east and west) of the proposed lease area. Specific information should be provided about these sources and their output to the EMI system. Currently, the DEIS **only discusses East Maui Lease stream water and well water**.
29. Information contained in the main body of the DEIS and its Appendices should be fully reflected in the Executive Summary.
30. Maps Need More Clarity:

The Fig 1-1 ditch system map does not very clearly delineate the EMI ditch systems. The colors used to indicate abandoned or active ditch sections are not very distinguishable. The dotted lines used to indicate ditch tunnel sections make the relationship of the various ditches hard to determine. Showing sections of the lease area at larger scale (zoomed in) and using contrasting colors to mark tunnel sections would facilitate public review.

The DEIS does provide several additional maps. (Fig 1-1, 1-3, 2-2, 2-2. All are more detailed, but they are still hard to understand.

Fig 1-3 shows the Alexander and Baldwin (A&B) use area for diverted water but does not indicate the County of Maui Department of Water Supply (MDWS) use area that depends upon the EMI diversions. The EIS needs to provide this information.

Fig 2-3 shows the MDWS service area, but needs to show which parts can be served by the Upper and Lower Waikamoi pipelines, which parts are served by the Wailoa ditch, and which parts are served by wells.

Fig 2-4 shows MDWS treatment plants and the upper Kula ditch, but needs to show which areas are served by these facilities.

- The location of the MDWS aqueduct systems (Upper and lower Kula Pipelines) which occur almost entirely outside the lease area and are not dependent upon continued water diversion from the lease area by EMI is not illustrated at all in the DEIS; it needs to provide this information.
- The DEIS needs to show and discuss the area containing streams outside the lease area that are diverted by EMI and provided to the A&B use area regardless of the outcome of the License agreements

All of these are important parts of the information the Board of Land and Natural Resources (BLNR) needs in order to understand what the EMI system does. If these items are not included on this map, new maps should be created to clearly include this information.

- In chapter 4, Fig 4-15, the “Haiku” label is actually in Hamakuapoko west of Maliko Gulch. Haiku is located east of Maliko Gulch.
31. In Appendix E, fig 47, the field inspections map has the label “Ho’olawa” where the stream and community of Honopou is located. It has the label “Haiku” where the Honopou stream intake on New Haiku ditch may be located. These labels create confusion, and need to be corrected.
 32. The DEIS states that, “Settlements along Hāna Highway from west to east, toward Hāna, include Huelo and Kailua makai of the Huelo License Area, Ke’anae and Wailua makai of the Ke’anae License Area and Nāhiku makai of the Nāhiku License Area.” Many communities in the lease area have no public water systems, and the DEIS needs to specifically discuss mitigation plans to restore sufficient flows to Puniawa, Ho’olawa, Mokupapa, Honokalā, Waipio, East Waipio, Waipio iki and Hanawana streams to provide domestic water to the hundreds of families who live in these communities. Their streams are not part of the 2001 IIFS petition for the East Maui Lease areas, yet the continued diverted conditions of their streams impacts their daily lives and their rights to have sufficient water for their domestic needs.
 33. Section 1.1 states that the “need” for the Water Lease is due to the lack of existing adequate alternative sources of water and infrastructure to meet these demands. This section of the DEIS needs to clearly define the amount and location of A&B acreage that actually needs irrigation, the availability of additional EMI sources of stream water outside the lease area, and the availability of reclaimed water from the Wailuku-Kahului wastewater treatment plant, to provide that irrigation. It also needs to note that a portion (roughly half) of the water in the Upcountry MDWS system comes from diversions outside the proposed lease area, or from fresh water wells, and is not dependent on the EMI system. The DEIS also needs to discuss the new Upcountry wells being planned by the MDWS and DHHL as potential “alternative sources”. None of this is made very clear by maps or text in the DEIS, and this needs to be corrected.
 34. The DEIS needs to discuss the current “Memorandum of Understanding” (MOU) executed between EMI and MDWS. It should also refer to the section of the MOU where both A&B and DWS agree to

work on plans to restore stream flows if agricultural needs change (which they already have!!) The DEIS should specify those plans for stream restoration that have been discussed by A&B and DWS.

35. The DEIS should have an accurate list of streams that are diverted by the Wailoa-Ko'olau Ditch: East & West Wailua Iki, and East & West Wailua Nui, Waipio, Hoalua, Ho'olawa, Na'ili'ili haele, Kailua, Waiohue, Kopili'ula, Wahinepe'e, Waiokamilo, Puakea, Puaka'a and Palauhulu.
36. The Alternative's section of the DEIS needs to discuss crops and growing methodologies that will use significantly less water than the maximum amount allowed by the IIFS. The Maui Tomorrow Foundation's report, "Mālama 'Āina: A Conversation About Maui's Farming Future," provides information on these proven methods. HC&S historically used their brackish wells for up to 40% of their water needs up to 2002. They are part of a reliable system. Despite this, A&B also reported being short of water 10 months out of the year, even though they had unrestricted access to all of the water they could divert from East Maui, and 25 mgd from Na Wai Eha and their system of 15 wells. This needs to be discussed in the EIS.
37. The Lowrie, New Hamakua, Manuel Luis, and Center Ditches intercept and divert dozens of streams. A complete chart of all the ditches and diversion points inside and outside of the lease area should be provided in the EIS. The County's upper and lower Kula pipelines traverse EMI lands, and are serviced by intakes on the upper reaches of several streams that flow through the East Maui lease area. The intakes, mostly above the East Maui lease area, are maintained by EMI, which charges the county for "water delivery" that arrives at the DWS reservoirs through the Kula pipelines. It is important that the DEIS clearly explains the workings of this system.
38. The DEIS should discuss the alternative of the system being managed as a public irrigation district, being managed by a partnership of agencies and stakeholders, and other possible management scenarios. Maui DWS also referred to a need to have the DEIS discuss these options in their comments. The DEIS should also discuss the option of individual lease areas being awarded to the residents of the area who depend upon the streams. Dismissal of this alternative as "speculation" and as offering "no environmental benefit" does not meet the required EIS content standard that requires a realistic examination of alternatives. The transition of other plantation ditches to irrigation districts has already happened to several Hawaii systems, and this alternative needs to be examined just as thoroughly as the evaluation of the alternative of Mahi Pono getting 88 mgd of East Maui water is examined.
39. The alternatives section needs to discuss a variety of updated fee schedules and a funding structure that creates enough revenue to actually actively manage the lease lands for watershed productivity.
40. The DEIS should clearly explain that no one else has bid on these East Maui leases, and A&B/EMI have had a defacto monopoly on their use.
41. Appendix B states that the amount of water flowing in streams has no impact on terrestrial flora and fauna. Appendix F says that cultural impacts are addressed by the 2018 CWRM decision. The DEIS needs to discuss how industrialization and dewatering of streams has left lasting and continuing impacts on the watersheds and the community members who dwell there, and who are trying to perpetuate native Hawaiian cultural practices despite artificially fluctuating water levels. The EIS should acknowledge those impacts and propose mitigation that will achieve the following:
 - a) restore watershed health and productivity in lease areas

- b) restore native stream life and viable stream flows for traditional agriculture, including in the Ha'ikū and Huelo communities.
- c) restore soil health and productivity, and adopt other regenerative practices such as windbreaks and Keyline contouring to reduce water demand in central Maui.

42. The DEIS must discuss the relative benefits of regenerative agricultural methods in future plans for the irrigated former sugar lands. Examples would be: rotational grazing; extensive cover cropping; contour plowing and water collection swales (see MTF "Mālama `Āina report referenced earlier). The DEIS cannot conclude that "sustainability" will be achieved by using the same outmoded methods that lead to past chronic water shortages and lost soil health.

43. The current set of Alternatives examined in the DEIS is extremely lacking. Dismissal of alternatives was done without factual information. The discussion of Alternatives must provide sufficient information for the reader to gain a good understanding of why particular alternatives are rejected. HAR 11-200-16 requires that:

"The draft EIS shall describe in a separate and distinct section alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks."

Unfortunately, none of the 3 Alternatives considered; or the 3 Alternatives dismissed, were explored with enough rigor or objectivity to meet this standard of evaluation.

44. The DEIS needs to disclose impacts of continued large scale diversions in the event of climate change, and provide strategies for the EMI system to respond to changes in rainfall patterns. There also needs to be a discussion of funding needed to increase resiliency and increase the capacity of the East Maui watersheds to store and release surface and ground water that will continue to supply the EMI system during changing weather events. The continued mass dewatering of streams will have impacts if rainfall patterns change; the impact of this must also be discussed.

45. The DEIS needs to discuss impacts of proposed large-scale diversions on aesthetic resources. Examples include the dry and diminished appearance of streams, pools and waterfalls enjoyed by the public during hiking and nature study and by local residents in areas like Ho'olawa, Hanawana, Mokupapa and Waipio.

46. Current EMI use of the lease area limits public use and enjoyment of public lands, as noted in comments from DLNR lands division and Na Ala Hele. The proposed lease area also includes streams that are part of recreation use at such facilities as the Garden of Eden arboretum, Twin Falls Community and Camp Ke'anae. Recreational use of many streams in the lease area, especially in local neighborhoods such as Hanawana, Hoolawa, Mokupapa, Honokala, Honopou and Huelo is already significantly impacted under the former lease conditions. The proposed diversions will continue those impacts and need to be discussed in the EIS.

47. The DEIS needs to discuss removal of decades worth of debris and waste from ditch system maintenance that has been left to clutter the natural features of the lease area.

48. If stream water is used for central Maui development, there will be a cumulative impact on public facilities and services that must be considered. A&B has "provided" stream water allotments to Maui County in the past to secure additional water meters for developments on A&B's own former agricultural lands

(such as Haiku Hill, Haiku Makai). The full range of potential development impacts resulting from this type of water allotment should be discussed.

49. The EIS needs to discuss the potential for and cumulative effects of A&B and/or Mahi Pono having access to millions of gallons of water to use for development if Ag operations “fail to be profitable.”

50. The DEIS needs to provide information on every stream in the lease area, including the amount of water that is diverted or planned to be diverted, from each section of each stream, from each stream as a whole, from each license area, and from all licensed areas as a whole.

51. Aquifers from Nahiku to Ke’anae are believed to be fully saturated, with no separated levels between the Kula and Honomanū basalt layers. (Gingerich, 1998). This implication and the deep connection between surface and ground water in a “saturated” aquifer needs to be discussed in the EIS. It should also acknowledge that diversions over the last century have had significant impacts on the aquifers and watershed health, which continue to progress; the DEIS needs to discuss the impact associated with cause a resumption of diversions.

52. Existing and ongoing impacts to our coastal waters and fisheries need to also be discussed in the DEIS. It should also be acknowledged that East Maui diversions over the last century have had significant impacts on coastal waters and fisheries, not just on Maui, but throughout the Hawaiian Islands; the proposed lease would cause a resumption of those impacts, and those impacts need to be discussed.

53. Significant native plant communities are found above Puohakamoa, Waikamoi, Haipuaena. Impacts of maintenance equipment bringing in invasive species needs to be discussed and mitigated.

54. Impacts on endangered fauna and flora (plants and avian species) need to be discussed in the EIS, as well as impacts on existing native stream life resources and anticipated impacts on all native stream life species used for traditional practices. We concur with USFWS comments, which should be used to formulate content of the DEIS.

55. Previous and ongoing impacts to archaeological resources such as lo’i, ‘auwai and house sites in the lease areas need to be fully documented. The EIS needs to discuss the fact that these types of impacts can be expected to continue if the proposed lease is granted.

56. Hamakuapoko has cultural sites in A&B and/or Mahi Pono agricultural fields that need to be identified and protected; Hamakualoa also has cultural sites in the lease area lands that need to have proper recording and protection. Old ditch structures such as the Spreckels Old Haiku ditch, are also deteriorating and drifting downstream in chunks. Impacts to all of these sites and structures, and impacts to the gathering and cultivation of traditional crops need to be addressed in the DEIS. This needs to include a discussion of impacts in areas where no restoration is being proposed, such as the Hanawana and Kailua areas, Waipio and Waipio Iki, Hoolawa, Honokala, Makapipi and Mokupapa.

57. The DEIS needs to use Kapa Maly’s East Maui study as part of the Cultural Impact Assessment.

58. Cumulative Socio-Economic impacts of A&B controlling use of such a large amount of water for 30 years, as proposed, must also be discussed in the EIS.

59. The EIS needs to discuss abandonment of ditch structures on permanently restored streams and what happens to diverted water on streams while they await “permanent restoration.” It also needs to discuss the effect of diversion design and its impact on native streamlife migration, as well as the impacts/benefits of permanently removing all ditch structures on the permanently restored streams. In addition, there needs to be a discussion in the EIS of who controls the diversion structures, how any allowable streamflow amounts will be enforced, and the relationship that public access to the leased areas has on the likelihood of streamflow violations being reported.

60. Some DWS Kula Pipelines intakes appear to divert streams in the lease area. The intake for the Nahiku DWS supply is in the lease area. Community water systems for Huelo, Honopou, Ho’olawa, and Waipio residents are in the lease area. What happens there in the lease area affects many potable water users; this should be discussed in EIS.

61. The DEIS needs to include a discussion of impacts of utilizing water for any uses other than agriculture that are anticipated over the 30-year term of the proposed lease.

62. The DEIS needs to provide details of plans to restore stream courses and watersheds in the lease area where diversions are being permanently abandoned and removed, as well as any positive and/or negative impacts of such restoration.

Mahalo for the opportunity to comment.

Albert Perez
Executive Director
Maui Tomorrow Foundation



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Albert Perez
Maui Tomorrow Foundation
55 North Church St., Suite A-4
Wailuku, HI 96793

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Albert Perez:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Following are the comments of Maui Tomorrow Foundation (MTF) re. Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. Maui Tomorrow is part of a coalition that has long requested environmental review for the removal of such large quantities of water - which is a public trust resource held in trust for all the peoples of Maui - from public lands.*

Unfortunately, now that the process is underway, we are disappointed to see that the DEIS mischaracterizes many important facts, glosses over others, and incorrectly attempts to portray the resumption of major diversions of millions of gallons of stream water every day as a benign act. This is not consistent with public representations by Mahi Pono that they want to be transparent, they don't need much water, and will take only what they need.

The type of information that must be included in the Draft EIS is specified in the content requirements established by Hawai‘i Administrative Rules (HAR) Sections 11-200-16 and 11-200-17. If these sections are not complied with, the document will not disclose enough information to government agencies, the general public, stakeholders, and decision-makers about the anticipated impacts of the project, alternatives to the proposed action and feasible

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measures that might be taken to mitigate potential impacts, sufficient to allow informed decision making.

Response 1: We appreciate the Maui Tomorrow Foundation’s (MTF) participation in this EIS process. We respectfully disagree with your generalized assertions that the Draft EIS “mischaracterizes many important facts, glosses over others, and incorrectly attempts to portray the resumption of major diversions of millions of gallons of stream water every day as a benign act.” The Draft EIS fully complied with all relevant requirements, including the content requirements set forth in §11-200-16 and 11-200-17, and the Draft EIS even includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement. The Draft EIS meets the necessary content requirements and for that reason we disagree with your comment that the Draft EIS does not disclose sufficient information about the anticipated impacts of the Proposed Action, alternatives to the Proposed Action, and feasible measures that might be taken to mitigate potential impacts, sufficient to allow informed decision making.

The representations made by Mahi Pono about its desire to be both transparent and to use only as much water as it needs to implement its farm plan are accurate. The Draft EIS is extremely detailed and provides a large amount of relevant information in an effort to meet that commitment to transparency. The Draft EIS also contains the Mahi Pono farm plan that shows the planned crops and the corresponding demand for water. This is true to Mahi Pono’s commitment to using only as much water as it needs. Moreover, it should be noted Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown on page 2-25.

Comment 2: *Spirit of the Environmental Impact Statement Law, Chapter 343, HRS.* HRS 343-1 provides, in pertinent part, that “... the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole. It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.”

In addition, HAR 11-200-19 provides that “In developing the EIS, preparers shall make every effort to convey the required information succinctly in a form easily understood, both by

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members of the public and by public decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail of the statement.”

The 2,700-page length of this DEIS is excessive, to the point where it frustrates the legislative purpose of public participation (as expressed in HRS 343-1 and HAR 11-200-19 above) during the review process. As a result, the benefits that should accrue to “all parties involved and society as a whole” are diminished. In addition, due to its length, the legislature’s goal of ensuring that “environmental concerns are given appropriate consideration in decision making” is thwarted as well. The EIS should be made more concise, and should clearly describe the impacts of a resumption in stream diversion upon the environment.

Response 2: We acknowledge the requirements and provisions of Hawai‘i Revised Statutes (HRS) § 343-1 and HAR § 11-200-19. However, we respectfully disagree with your comment that the Draft EIS is excessively long. The Proposed Action implicates complex substantive issues with long histories. The EMI Aqueduct System has been diverting East Maui stream water for over a century as discussed in Section 1.3.2 of the Draft EIS. A&B's request that the Board of Land and Natural Resources (BLNR) offer a long-term (30-year) water lease at public auction was made on May 14, 2001 and has yet to be acted upon due to a series of regulatory and legal challenges. The proceedings before the Commission on Water Resource Management (CWRM) started in 2001 and only concluded in June 2018. In May 2001, Native Hawaiian Legal Corporation (NHLC) filed 27 petitions to amend the interim instream flow standards (IIFS) for numerous streams within the License Area on behalf of Nā Moku ‘Aupuni ‘O Ko‘olau Hui (Nā Moku), Beatrice Kepani Kekahuna, Marjorie Walleit, and Elizabeth Lehua Lapenia (IIFS petitions). The IIFS proceedings concluded 17 years later, in June 2018, with CWRM's issuance of its Findings of Fact, Conclusion of Law and Decision and Order in CCH-MA13-01 (CWRM D&O). The Draft EIS addresses this historical perspective, as required under HAR § 11-200-17.

We also note that the actual text of the Draft EIS is approximately 560 pages, which includes numerous graphics, and there are a total of thirteen appendices, nine of which were completed by technical consultants. We also note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). The Applicant made every reasonable effort to convey information through the Draft EIS in a manner that is accurate, thorough, and appropriately concise in order to provide the public with an opportunity to fairly analyze the potential impacts of the Proposed Action.

Comment 3: *This DEIS is more than just deficient; in its current form, there are so many inadequacies that it would be better to start over. The DEIS does not discuss much of the information that we asked to be included in our comments on the EISPN. As detailed in our latest comments below, this document fails to meet the standards for an environmental impact statement. It does not incorporate known information about the natural and cultural resources of*

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this area, and it relies on misleading assumptions for its conclusions. The DEIS fails to disclose the amount of water taken from each stream, omits essential maps, and glosses over known impacts that have long been raised by various participants in this process. These deficiencies need to be corrected; the current DEIS should be withdrawn, and a new DEIS should be released for another full DEIS public comment period.

Response 3: HRS § 343-2 defines "environmental impact statement" as "*an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.*" The Draft EIS discloses the environmental effects of the proposed Water Lease, and the impacts of the proposed Water Lease on the economic welfare, social welfare, and cultural practices of the community and State, as well as the effects of the economic activities arising out of the proposed Water Lease, and presents measures to minimize adverse effects, and also presents alternatives to the Water Lease and the environmental effects of those alternatives. Moreover, the Draft EIS was prepared in compliance with the relevant rules, including HAR § 11-200-16 and 11-200-17, and the Draft EIS includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement as discussed in Response #1 above. MTF's comments (letter and testimony) provided during the EISPN comment period are included in Appendix L and M together with our response to those comments. As to your general comment above that "*The DEIS fails to disclose the amount of water taken from each stream, omits essential maps, and glosses over known impacts that have long been raised by various participants in this process*" please see our detailed, point-by-point responses to your more specific comments on these topics below, e.g., Responses #15, 55, and 136. We respectfully disagree with your statement that the Draft EIS is deficient and should be withdrawn.

Comment 4: *Following is a list of our concerns. Please make sure to respond in a point-by-point fashion in the Final EIS, as required by HRS 11-200-22(c)(1).*

Scope of the Draft EIS. The Project Summary statement contains several inaccuracies that need to be corrected, as follows: "The Water Lease . . . will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui ..." This is misleading, because it is not a complete representation of the facts. A reader of this statement could come away with the idea that ALL of Upcountry Maui water needs are dependent on the granting of a lease.

Response 4: Regarding your comment that we respond in a point-by-point fashion, please note that we have provided responses to each point that you bring up in your comment letter as required by HRS § 11-200-22(c)(1).

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We respectfully disagree with your comment that the representation regarding the relationship between EMI, the EMI Aqueduct System, and the Maui Department of Water Supply (MDWS) Upcountry Maui Water System is misleading as further explained below in the Responses #5 through #13 below, as well as Section 2.1.3.1 of the Draft EIS.

Comment 5: *This is incorrect, because: a) Upcountry water needs are also supplied by wells*

Response 5: The Draft EIS acknowledges that the MDWS Upcountry Maui Water System receives water from wells. Section 2.1.3.1 of the Draft EIS notes 10-20% of the water delivered to the Upcountry Maui Water System is provided by wells. Information in the Draft EIS regarding the wells was taken from the CWRM D&O. However, following publication of the Draft EIS, we received additional information from the MDWS which resulted in edits to Section 2.1.3.1. as shown on pages 2-13 to 2-20. Specifically, as it relates to wells that serve the Upcountry Maui Water System, more detail was added to accurately describe the wells and their service areas. Hence, as described in Section 2.1.3.1 of the EIS and as shown on page 2-17 of the Final EIS, although the Upcountry Maui Water System is supplied by water from wells, well water only accounts for a small percentage of the total water being delivered and is not adequate to meet the current total demands on the Upcountry Maui Water System.

Comment 6: *This is incorrect, because: b) Upcountry water needs are predominantly supplied by surface water obtained outside of the Lease Area, and treated at the Piihoho and Olinda water treatment facilities.*

Response 6: Regarding your comment on Upcountry Maui water needs being predominantly supplied by surface water obtained outside of the License Area, this statement is true for a portion of the Upcountry Maui Water System, in the areas that are served by the Upper and Lower Kula Systems. These systems are supplied primarily by the Upper and Lower Waikamoi Flumes, respectively, and the waters are treated at the Piihoho and Olinda treatment facilities as you note. As discussed in Section 2.1.3.1 of the Draft EIS, these systems are situated on private lands now owned by EMI and are operated and maintained by EMI staff. However, please note that this section mistakenly referred to Mahi Pono as the landowner of the land that the Upper and Lower Waikamoi Flumes are situated on. This has been corrected in the Final EIS as shown on page 2-13.

The source of water for these systems comes from land owned by EMI and the MDWS' right to access this source on a long-term basis is contingent upon the issuance of the Water Lease. As discussed in Section 3.3 of the Draft EIS:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS. At this

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point in time, it is unknown whether sufficient groundwater resources exist in Upcountry Maui to meet these water demands. It is anticipated that the development of alternative water-source infrastructure would be prohibitively expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment.

However, please note that the above discussion regarding the Upper and Lower Kula Systems have been supplemented with the additional figure as shown on page 2-16 which has been added to Section 2.1.3.1 of the Final EIS to accurately show which system is serving which community in Upcountry Maui.

As discussed in Section 2.1.3.1 of the Draft EIS, “*The Upcountry Maui Water System relies on three surface water sources, which accounts for approximately 80-90 percent (13 mgd) of water delivered through the Upcountry Maui Water System (CWRM D&O, FOF 799).*” In addition to the Upper and Lower Waikamoi flume sources, serving the Upper and Lower Kula Systems, there is the EMI Aqueduct System, which is the primary source for the Makawao System, which provides water via the Wailoa Ditch to the MDWS’ Kamole-Weir Water Treatment Plant (WTP). As discussed in Section 2.1.3.1 of the Draft EIS, “*average daily use by the MDWS from the Wailoa Ditch is about 7.1 mgd, which includes water processed by the Kamole-Weir Water Treatment Plant (WTP) (discussed in further detail below) and non-potable water for the KAP, which receives water from Reservoir 40.*” Reservoir 40 is sourced by the EMI Aqueduct System as well. This accounts for approximately more than half of the total surface water delivered to the entire Upcountry Maui Water System.

Moreover, the water delivered to the MDWS through Wailoa Ditch is an important back-up source for the Lower Kula and Upper Kula Systems during dry periods as the Wailoa Ditch is the more reliable of the three Upcountry surface water sources. Water is pumped uphill from the Kamole-Weir WTP to the Upper and Lower Kula systems during dry periods. Therefore, these systems also depend on the EMI Aqueduct System in crucial, drought times. Please note that Section 2.1.3.1 of the Final EIS has been supplemented to include this information as shown on pages 2-19 to 2-20.

Comment 7: *This is incorrect, because: c) These surface water treatment facilities have storage reservoirs that can supply the Upcountry system for periods when there is no rainfall and little stream flow.*

Response 7: You are correct. The water treatment facilities (i.e., Olinda and Pi‘iholo), do have storage reservoirs. However, the Kamole-Weir facility does not have a reservoir. Moreover, these reservoirs are not meant to supply water for extended periods of time. History has shown that pumping water from the Kamole-Weir WTP is required during extended drought periods as discussed in Response #6 above.

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Comment 8: *This is incorrect, because: d) Upcountry water needs have historically used water from the Kamole water treatment facility only during drought periods, or when the other water treatment facilities are offline for maintenance.*

Response 8: This is not correct. As stated above, Kamole-Weir WTP is the primary source of water for the Makawao Water System/service area of Upcountry Maui. However, while the Kamole-Weir WTP is not the primary source for the areas served by the Upper and Lower Kula Systems, as noted in Response #6 above, the Kamole-Weir WTP (and thus the EMI Aqueduct System) is an important source of water for the Upper and Lower Kula Systems during times of drought, when there is very little water coming from the Upper and Lower Waikamoi Flumes.

Comment 9: *This is incorrect, because: e) The Maui County Department of Water Supply regularly uses its authority to declare several stages of water shortage, each of which results in conservation of water Upcountry, thus extending the supply.*

Response 9: Regarding your comment on MDWS declaring shortages which result in extending the supply to Upcountry Maui, this statement is correct, but only on a temporary basis. The water shortage declarations and resulting reductions in water use cause disruption and harm to Upcountry residents, businesses, public facilities, and farmers - particularly during extended water shortages.

Comment 10: *This is incorrect, because: f) It is well known that as long as the County relies on surface water, periodic water shortages and shortage declarations will continue. A statement to this effect is included in the draft Maui County Water Use and Development Plan.*

Response 10: It seems evident that if the MDWS does not develop new sources of water, periodic water shortages for MDWS customers and MDWS shortage declarations are likely to continue. Similarly, if the MDWS loses access to existing sources of water, water shortages and shortage declarations for MDWS' Upcountry customers will only get worse. The Proposed Action assessed in this EIS contemplates that the surface water deliveries to the MDWS through the EMI Aqueduct System and otherwise (as discussed in the responses above), which together supply approximately 80 - 90% of the surface water delivered through the Upcountry Maui Water System would continue.

Comment 11: *This is incorrect, because: g) Development tunnels in the Lease Area will continue to produce millions of gallons of water every day that will enter the EMI Aqueduct System, even during droughts; it will also continue to flow with or without a Lease.*

Response 11: It is not clear what specific "development tunnels" in the Water Lease License Area you are referring to. However, with respect to droughts, and as discussed in Response #13, according to the Stearns & MacDonald report you cited, only certain types of tunnels in East Maui will continue to produce water in dry weather. The rest are affected by rainfall. Any water that presently comes from any EMI development tunnels within the License Area and is

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transported through the EMI Aqueduct System is accounted for in the estimated ditch flow numbers and amounts of water delivered by the system and would be affected by the Water Lease.

Comment 12: *The EIS needs to include and analyze data, available from CWRM, that provides monthly surface water production figures for the Piiholo, Olinda and Kamole surface water treatment plants, as well as the monthly pumpage reports for all of the wells that serve Upcountry Maui.*

Response 12: Your comment is unclear as to the exact information you are requesting. However, we note that the EIS does include average production figures for the MDWS' Pi'iholo, Olinda, and Kamole-Weir WTP. Similarly, the scope of your request for monthly pumpage figures for "all the wells that serve Upcountry Maui" is not within the parameters of this EIS, which has been prepared to assess the impacts of the proposed Water Lease, which would continue to supply East Maui surface water through the EMI Aqueduct System. However, the long-term average production of the Upcountry Maui wells, which is more informative than monthly figures, which can have considerable variance, was provided in Section 2.1.4 and Section 3.1.1.1. Moreover, please review Section 2.1.3.1 of the Final EIS, which provides information regarding the Upcountry Maui Water System, as shown on pages 2-13 to 2-20.

Comment 13: *According to Stearns & McDonald, "East Maui has few perennial streams in proportion to its size, and they are chiefly small due to the water sheds being underlain with permeable lavas. Forty tunnels recover 6 million gallons a day of high-level water in East Maui and all from structures other than dikes."*

The EIS needs to include and analyze data showing the amount of water obtained from all development tunnels and/or wells in the Lease Area. This water, which will continue to flow, even during drought, with or without a Lease, can be used to supply MDWS and/or the Mahi Pono fields in Central Maui. This information should be incorporated into evaluation of all Alternatives.

Response 13: Your comment and reference to "forty tunnels" by Stearns & MacDonald lacks specificity as you did not provide a copy of the report nor the page references. However, assuming that you were referring to their report entitled "Geology and Ground-Water Resources of the Island of Maui, Hawaii" from 1942, we did find a reference made to "forty tunnels" (though not in the same context that you provided in quotes above), in a chapter on High-Level Ground Water in East Maui. On page 141, the report cites that "Forty tunnels driven to develop water are shown on plates 1 and 12. Pertinent data regarding the tunnels are on page 213." The report goes on to say that six of those tunnels are "exploratory" only. Further, on the referenced page 213 of the report, which includes a table entitled "Water-development tunnels in East Maui", that table indicates that the forty tunnels were owned by a number of parties; they did not all belong to EMI, do not all contribute to the waters gathered and transported by the EMI Aqueduct System, and thus are not within the scope of this EIS.

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With respect to your comment about tunnel water continuing to flow, even during drought, we note that in the Stearns & MacDonald report, a comment is made on page 139 that *“The chief gain from tunnels that failed to recover water in East Maui is the knowledge that only valleys containing perennial streams before burial by lava will yield water to tunnels in dry weather. While certainly not conclusive, this report you cited indicates that only certain types of tunnels in East Maui will continue to produce water in dry weather.”* The rest are affected by rainfall.

Regarding your comment that this water from development tunnels needs to be evaluated into all of the alternatives, including the Proposed Action, please note that any water contributed by EMI’s development tunnels for irrigation use in Mahi Pono’s Central Maui agricultural fields is delivered by the EMI Aqueduct System, and thus is accounted for in the estimated ditch flow numbers and amounts of water available to provide to the MDWS and the Mahi Pono fields for all the alternatives in this EIS.

Comment 14: *Similarly, the following statement in the Project Summary is potentially misleading: “The Water Lease . . . will allow for the continued operation of the EMI Aqueduct System . . . to deliver water . . . for the Nahiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.” The EIS needs to provide a diagram of the relationship of the Nahiku Water System to the EMI Aqueduct System, showing exactly where it obtains its water from, and demonstrating, if possible, why it would be impacted by failure to get a lease. For example, on East Makapipi Stream, there is a separate development tunnel inside the Koolau tunnel that gathers water and pipes it OVER the water that is flowing in the Koolau tunnel to a pipe that serves the Nahiku system. This water is not commingled with the Koolau tunnel water, and will continue to flow regardless of whether the proposed lease is obtained.*

Response 14: In response to your comment requesting diagrams specifically showing where Nāhiku water comes from, please see page 2-23, which Figure 2-6 has been added to the Final EIS. Please note that following publication of the Draft EIS, the applicant received additional information from the MDWS regarding the source of the water that services the Nāhiku community. A copy of the MDWS letter is included in Appendix P to the Final EIS. Please note, the description of the Nāhiku water service from Section 2.1.3.3 of the Draft EIS, has been revised to take into account clarifications from the MDWS, as shown on pages 2-21 to 2-22.

According to MDWS, EMI’s West Makapipi Tunnel 2, Well No. 4806-07, which is also known as the “Nāhiku Tunnel”, is the sole source of water for the MDWS Nāhiku Water Service Area. It is our understanding that EMI developed and owns the Nahiku Tunnel that is the source of the water. Per a 1973 Memorandum of Understanding with EMI and HC&S as amended, MDWS can draw only up to 20,000 gallons of water per twenty-four hour day to serve the Nāhiku community from properties owed by EMI and those under license from the State. EMI continues to deliver water to the Nāhiku community pursuant to a 2018 agreement which embodied the 1973 agreement as amended, which is premised upon EMI’s continued receipt of permits or a

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lease from the State BLNR. Even though the agreement provides the MDWS a right to up to 20,000 gpd per twenty-four hour day, EMI has accommodated the needs of the Nāhiku community, which have ranged between approximately 8,345 (2018) to 40,925 (2007) gpd on a daily basis, although supply of amounts over 20,000 gpd on any given day is not required under the agreement.

Comment 15: *The DEIS document needs to acknowledge that "existing conditions" and operations of the East Maui Irrigation (EMI) system for over a century already have multiple impacts on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. These current conditions need to be discussed, and viable alternatives to the status quo presented, in the alternatives section of the DEIS. The scope of alternatives discussed in the EISPN is too narrow to comply with the standards set out in HAR 11-200.*

Response 15: Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model

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(Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

Regarding your comment about scope of alternative discussed in the EISPN, only two alternatives to the Proposed Action were presented in the EISPN; a "No Action" alternative and an alternative Water Lease that permitted less than the maximum amount of water that could be potentially diverted after compliance with the CWRM D&O. However, the alternatives analysis was significantly expanded in the Draft EIS based on comments received during the scoping process, as shown in Chapter 3. HAR §11-200-17(f) requires an analysis of alternatives to the proposed action "*which could attain the objectives of the action.*" The objectives of the Water Lease (i.e., the Proposed Action), as stated in Section 1.2 of Draft EIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku.

Specifically, Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an

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alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3. Moreover, based on comments received on the Draft EIS, the alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the Final EIS.

Comment 16: *The EISPN states in many places that the Proposed Action will maintain existing conditions, and that no significant impacts are anticipated. This is a serious flaw that will invalidate the entire EIS if it remains unchanged. Currently, Alexander and Baldwin/East Maui Irrigation/Hawaiian [sic] Commercial & Sugar (A&B) is using less water than they were using prior to the end of sugar operations; it may be years before they use much more.*

Response 16: Please note that at this stage, we are no longer responding to comments on the EISPN. The EISPN is used as the initial stage of the EIS process in order to scope the Draft EIS. With respect to the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai'i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

With regards to your comment about A&B / Hawaiian Commercial & Sugar Company (HC&S) using less water than in the past, this is addressed in Section 2.1.2 of the Draft EIS as follows:

East Maui, specifically the License Area, has already been affected by increased stream flows resulting from less offstream diversions due to the closure of sugar

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operations in December 2016. Currently, the EMI Aqueduct System is only diverting approximately 20 mgd. As a result, very little surface stream water is currently being diverted relative to what would be allowed should the Water Lease be awarded per the Proposed Action. However, the amount of water that may be diverted should the Water Lease be issued is substantially less than the amount that was diverted during normal sugar production. For example, in 2006 it is estimated that the EMI Aqueduct System delivered approximately 156.69 mgd at Maliko Gulch, whereas under the CWRM D&O, it is estimated that the delivery at Maliko Gulch will be approximately 92.32 mgd (Akinaka, 2019).

However, please note that Section 2.1.4 of the Final EIS has been revised to reflect Mahi Pono's current and near-term expected water use as shown on pages 2-30 and 2-32, which details average water being diverted from East Maui streams through the EMI Aqueduct System and how that water will be used. It important to note that as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

Although the Proposed Action will divert more water than under current conditions and when compared to the amount of water being diverted immediately prior to the cessation of sugarcane operations, the Proposed Action is not anticipated to result in significant adverse impacts as discussed throughout Chapter 4 as discussed above in Response #15 above. The Proposed Action cumulatively will result in the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4 albeit to a lesser extent and conditions are not anticipated to significantly change under the Proposed Action.

Comment 17: *In terms of environmental impacts of the Proposed Action, it does not matter what their stated future intent is. 'Opae and other stream life currently have access to habitat that currently exists. The Proposed Action will reduce or eliminate this existing habitat. The impacts of the proposed action must be analyzed in the current context.*

Response 17: Regarding your comment about 'opae and other stream life having access to habitat that currently exists, please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the

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maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown on pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text on pages 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See on pages 4-61 to 4-62 of the Final EIS. Moreover, please note that the HSHEP model includes 'opae within its analysis.

Comment 18: *Similarly, kalo farmers currently have water available for kalo that will be reduced or eliminated by the Proposed Action. The many impacts of a reduction in available water, as compared to existing conditions must be analyzed.*

Response 18: Regarding your comment that kalo farmers currently have water available for kalo that will be reduced or eliminated by the Proposed Action, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for

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these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on page 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration status); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamo Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the

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necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 19: *Many people at the EISPN hearings on February 22nd and 23rd, 2017 testified regarding positive impacts that they have already seen from increased stream flow resulting from the cessation of sugar operations. The EIS must discuss the following: a) Information about known impacts that occurred in the past, which are likely to occur again if water is diverted as it was in the past*

Response 19: Regarding your comment that many people at the EISPN public scoping meetings on February 22nd and 23rd, 2017 testified noting positive impacts seen from increased stream flow resulting from the cessation of sugar operations, please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See pages 4-158 to 4-159 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. This is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSHEP model estimated that approximately 79.8% of total HU would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected under the No Action alternative as noted above in Response #17.

Regarding your comment that the EIS must discuss information about known impacts that occurred in the past, as discussed in Response #15 above, we acknowledge that an EIS must

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consider cumulative impacts, which means "the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions." HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision-making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease. However, please note that streams in East Maui have been diverted for over a century and it is not scientifically possible to fully document impacts that first took place more than a century ago as pre-diversion data does not exist. Please note however, that contrary to your last statement in Comment #19, the Water Lease will not allow diversions similar to what took place in the past. Significantly less water will be diverted due to the limitations imposed under the CWRM D&O. Accordingly, considerably less East Maui surface water will be applied to the Central Maui agricultural fields than was applied in the past, when these fields were cultivated in sugarcane.

Comment 20: *b) present impacts that are continuing, such as watershed degradation as a result of invasive species having gained a foothold because of low stream flows.*

Response 20: The EIS does discuss relevant environmental impacts. Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures) of the EIS provides a comprehensive description and impact analysis of the License Area, including a description of the existing environment. Moreover, as discussed in Response #15 above, although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families.

Specifically, as it relates to invasive species, it is noted in Appendix C that that low-elevation portions of the License Area are already highly impacted by invasive plants. However, it is noted in Appendix C that high-elevation portions of the License Area are predominately dominated by native species and is very likely to contain habitat for several endangered or threatened species. Impacts related to flora and fauna as a result of the Proposed Action are discussed in Section 4.4 of the EIS. Please note that Section 4.4.1 and Section 4.4.2 have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS. Moreover, as discussed in Response #17 above, it is assumed that from current conditions (approximately 23.3 mgd diverted) to the point under the Proposed Action

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(approximately 87.95 mgd), the number of HU in the License Area would decrease to 63.9% of the total HU possible within the License Area.

Comment 21: *Although the DEIS discusses a public auction of the proposed lease, it is clear that the DEIS is written from the perspective of EMI obtaining that lease. If this EIS is truly intended to be able to serve for a multiple bidder auction, many more scenarios need to be included, including the possibility of bids from government entities such as the state or Maui County, bids from nonprofits, water utilities, water authorities, or bids from other for-profit companies.*

Response 21: The EIS was prepared to support the application for the issuance of a long-term Water Lease for the purpose of developing, diverting, transporting and use of the State's East Maui waters through the EMI Aqueduct System for the uses described in the EIS. The EIS also contemplates the environmental effects of variations on the Proposed Action, including scenarios where the amount of water permitted for the Water Lease is insufficient to supply Central Maui and Upcountry Maui. Thus, the EIS analyzes proposed uses of the water, but is not necessarily tied to a specific applicant although Section 1.3.3 of the Draft EIS explains how A&B, on May 14, 2001, requested that the State offer at public auction a long-term water lease under HRS § 171-58 for the, "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. Hence, any party who intends to use the water in a manner consistent with the EIS analysis could, presumably, use the EIS to support a bid on the Water Lease at public auction.

Comment 22: *The DEIS needs to discuss whether other potential bidders would need to comply with HRS 343 on their own, and if so, how the timing of submission of any associated HRS 343 documents would be coordinated to achieve the public benefits associated with making a public auction competitive.*

Response 22: Please note that neither the Applicant, nor the preparers of this EIS, have the authority to determine when an EIS is needed and whether this EIS (assuming its acceptance by BLNR), would be deemed adequate to cover a water lease scenario of a different nature than what is considered in this EIS. That determination would have to be made by BLNR as the accepting authority under HRS Chapter 343. However, as discussed above in Response #21, this EIS was prepared to support the application for the issuance of a long-term Water Lease of the State's East Maui streams through the EMI Aqueduct System for the purpose of providing water to MDWS, as noted, and to Central Maui for agricultural purposes. Hence, any party who intends to use the water in a manner consistent with the EIS analysis could, presumably, bid on the lease at public auction.

Comment 23: *Since the proposed action of issuing a lease is an agency action, the EIS also needs to discuss why it would not be more appropriate for the Board of Land and Natural*

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Resources to prepare the EIS and consider all relevant factors associated with a multiple bid auction scenario.

Response 23: BLNR determined that A&B was to prepare the EIS for the proposed Water Lease. As explained in Section 1.4 of the Draft EIS, in connection with A&B's May 2001 submittal to the BLNR requesting that the BLNR offer a long-term (30 year) water lease at public auction, A&B offered to perform the associated HRS, Chapter 343 environmental review. As part of the contested case hearing on the proposed Water Lease, NHLC, on behalf of Nā Moku, objected to A&B undertaking the environmental review process, and asserted that the BLNR was required to prepare conduct the environmental review. NHLC later orally withdrew its objection during oral arguments before the BLNR in May 2015. BLNR issued an order on April 14, 2016, directing A&B to scope the EIS, including the identification of the portions of the EIS that could proceed prior to the CWRM issuing a final IIFS decision, and those portions which could not. That scope was filed with the BLNR in June 2016. On July 8, 2016, the BLNR approved the scope and instructed that “A&B and EMI should proceed with the preparation of an environmental impact statement (EIS) in as expeditious manner as possible.” The EIS recites this history in Section 1.3.3 of the Draft EIS and recognizes that the Water Lease will be awarded by public auction.

Comment 24: *The DEIS is inconsistent with regard to how the terms “lease area” and “license area” are used. In the Summary on page i, reference is made to “Issuance of one long-term lease of State land from the Board of Land and Natural Resources pursuant to Hawai‘i Revised Statutes (HRS) Section 171-58(c) for the “right, privilege, and authority to enter and go upon” the State-owned Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas ...” Judging by this language, the “lease area” is comprised of four “license areas”. However, this relationship is not maintained throughout the document; the relationship between “lease” and “license” is reversed in several sections. For the sake of clarity, our comments will refer to the “lease area” as being comprised of the four separate “license areas”. The relationship between the terms “lease area” and “license area” needs to be clearly described in the EIS, and this relationship must be maintained throughout the document in order for it to make sense.*

Response 24: Regarding your comment about the use of terms of “lease area” versus “License Area,” in the Draft EIS, please note that the EIS uses the term “License Area” when referring collectively to the four State-owned Nāhiku, Ke‘anae, Honomanū, and Huelo areas that were separately licensed under the revocable permits (approximately 33,000 acres). The term “Lease Area” is only used when referring to the Modified Lease Area alternative analyzed in the EIS as presented in Section 3.2.2.2 of the EIS. This has been corrected throughout the Final EIS where incorrectly used.

Comment 25: *We also note that the responses to our comments on the EISPN for this project were difficult to make sense of. Although we sent in 14 pages of very specific comments, the responses were very generic, and did not directly correspond to many of the points we raised. As stated previously, this frustrates the purpose and the spirit of the EIS law. As required by HRS*

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11-200-22(c)(1), the Final EIS must include a) a Point-by-point discussion of the validity, significance, and relevance of comments; and b) a discussion as to how each comment was evaluated and considered in planning the proposed action.

Response 25: MTF provided a 13-page written comment letter on the EISPN, dated March 10, 2017. We also note that you, Mr. Perez, attended the public scoping meeting held on February 22, 2017. A copy of MTF's letter, the transcript from the public scoping meeting, and our responses to the comments made, were included in Appendix M of the Draft EIS, as required under HAR § 11-200-17(p).

This response letter was drafted to satisfy the requirements under HAR § 11-200-18 and 11-200-22, to include a point-by-point discussion of the validity, significance, and relevance of comments on the Draft EIS, and a discussion as to how each comment was evaluated and considered in planning the Proposed Action. Because your comment is presented in generalized terms and does not point to any specific deficiency in the response to MTF's EISPN comment letter, we are not able to respond in further detail, except to note that the requirements for responding to comments sent in response to an EISPN are set forth under HAR § 11-200-15(d) and differ from the requirements to respond to a comment on a Draft EIS, and those requirements have been satisfied.

Comment 26: *The Listing of Permits and Approvals section states that issuance of the Lease "would ... lead to construction activities such as expanding the KAP and building facilities in support of diversified agriculture in Central Maui." The EIS needs to analyze the many impacts of other types of potential agricultural construction that could be facilitated by the issuance of a Lease, such as farm dwellings and/or farm labor dwellings in the event of creation of subdivisions or condominium property regimes.*

Response 26: We respectfully disagree with your comment. The EIS must consider direct impacts of the Proposed Action, as well as cumulative and secondary impacts. Housing within the Central Maui agricultural fields is not a "reasonably foreseeable" impact from the Proposed Action. See HAR § 11-200-2 (Definitions). Please note that no such housing or similar development is proposed. Regarding the Kula Agricultural Park (KAP), as noted in the EIS, that is a County property and the County would be responsible for any required assessments that exceed the contemplated scope of activities in that land.

Comment 27: *The EIS needs to discuss the condominium property regimes that have already been created, or could be created in the future, within the land that was sold by A&B to Mahi Pono's various LLCs. It also needs to discuss the potential impacts that would result if such dwellings were to obtain access to diverted surfact [sic] water from East Maui.*

Response 27: There is no plan for the development of dwellings within the Central Maui agricultural fields now owned by Mahi Pono. The Mahi Pono farm plan sets forth Mahi Pono's plans for those lands. An analysis of the creation of condominium property regimes or

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dwellings, none of which are contemplated in connection with the Water Lease, is beyond the scope of the EIS as mentioned above in Response #26.

Comment 28: *The EIS needs to provide evidence, such as chain of title from Kingdom days, showing how each parcel of land in the lease area, as well as in the central Maui agricultural area was legally acquired, and is now the property of A&B, EMI, and/or Mahi Pono.*

Response 28: Please note that this is not within the scope of the EIS. As discussed in Response #12 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B’s former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS. Additionally, please note that the License Area is not owned by A&B, EMI, or Mahi Pono. It is owned by the State of Hawai‘i as discussed in Section 1.3.1 of the Draft EIS.

Comment 29: *The EIS needs to identify the underlying ownership of every portion of every ditch and tunnel in the lease area, and provide evidence, such as chain of title from Kingdom days, showing how each parcel of land in the lease area, as well as in the central Maui agricultural area was legally acquired, and is now the property of A&B, EMI, and/or Mahi Pono.*

Response 29: This is not within the scope of the EIS. As discussed in Response #12 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B’s former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

However, please note that as described in Section 3.3 of the Draft EIS, the Territory (now the State) of Hawai‘i and EMI entered into an agreement (the “1938 Agreement”) to facilitate and govern the continued auction of long term water licenses of the State-owned portions of the Collection Area so that, regardless of who the successful bidder at auction may be, the EMI Aqueduct System could continue to be operated across both the State-owned and Mahi Pono/EMI owned lands by EMI, the licensee (if not EMI), the State, or both, as the case may be. Section 3.3 of the the EIS has been expanded to discuss this, as shown on pages 3-24 to 3-25. Moreover, please note that the 1938 Agreement has also been included in the Final EIS as Appendix R.

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Comment 30: *The EIS needs to provide a clear explanation and diagram(s) of the management and financial relationships among A&B, EMI, the Canadian Public Sector Pension Investment Board, Trinitas, Pomona Farming, and Mahi Pono. It also needs to evaluate exogenous events like natural disasters, or changes in ownership or management objectives in any one of the above mentioned entities, could impact the natural, economic, cultural and/or social environment on Maui.*

Response 30: Any management or financial relationship between the entities you listed is beyond the scope of the EIS, is not relevant to disclosing and describing all identifiable environmental impacts (HAR § 11-200-23(a)), and does not address any specific aspect of the proposed Water Lease. The scope of the EIS is discussed in Response #12.

Regarding the effects of any presently unforeseen changes in management objectives, that too is outside of the scope of the EIS. The use of the water under the Water Lease is described in the EIS and contemplates that most of the water would be used for agricultural irrigation purposes. It is expected that the Water Lease will authorize a specific character of use for the leased water and any use that is outside of that authorization would not be permitted. Regarding potential impacts due to natural disasters, those are addressed in the Draft EIS. Draft EIS Section 4.3 (Natural Hazards) addresses the potential impacts from climate and climate change, sea level rise, floods and tsunami hazards, hurricanes and wind hazards, and seismic hazards.

Comment 31: *Over the past few months, huge plumes of dust have been seen over Central Maui, which are generated by Mahi Pono farming equipment. The EIS should provide information regarding the expected farming practices of Mahi Pono, which will be facilitated by issuance of the proposed Lease, and how they will impact air quality and offshore ecosystems, including sediment-sensitive species.*

Response 31: Section 4.10 of the Draft EIS describes conditions in Central Maui, including a recognition of wildfires (“wildfires in Central Maui on fallow fields formerly in sugar cultivation, have generated intense smoke and dust over relatively short periods of time until they have been extinguished.”) and projects that the transition from sugarcane to diversified agriculture may affect air quality from an increase in equipment emissions and in the very short-term, from dust from uncultivated land. As explained in the Section 4.10 of the Draft EIS, the diversified agricultural activities in Central Maui will be subject to HAR, § 11-60.1-33, Fugitive Dust, which states, in part: “11-60.1-33(a): No person shall cause or permit visible fugitive dust to become airborne without taking reasonable precautions.” And, § 11-60.1-33(b): “...no person shall cause or permit the discharge of visible fugitive dust beyond the property lot line on which the fugitive dust originates.” Given the expanse of the agricultural fields in Central Maui, extra precaution must be exercised near its boundaries. Particularly in these areas, mitigation measures will include keeping fallow land to a minimum, using cover crops to minimize exposed soil and limiting vehicular speed during plowing activities and while traveling onsite. Also, water will be used to minimize dust during activities such as grading and grubbing, any gathered soil will be

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stabilized, any loading for soil will minimize the drop distance, and soil transport will use water or soil covering to control dust.

The Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff associated with their current farming activities. As Mahi Pono incrementally increases the amount of farmed acreage over time and crops are planted (particularly the permanent orchard crops), ground disturbance will again be limited, as appropriate and consistent with farming BMPs.

Comment 32: *Under the DEIS Section 3 – Alternatives, Subsection 3.3 - No Action (page 3-6), Line 6, reads: However, under the 1938 agreement and a related calculation involving isohyet analysis of rainfall patterns, it is understood that approximately 30% of the water in the License Area streams is derived from the privately-owned lands. Therefore, the EMI Aqueduct system could continue to divert approximately 30% of the water available from the Collection Area, plus...” (emphasis ours) The 1938 agreement, Section VIII, paragraph (4), by and between the Territory of Hawaii and East Maui Irrigation Company, Limited dated March 18, 1938, reads as follows:*

Long term average water yield” shall be the arithmetical average annual water yield which would have been diverted from any given drainage area under consideration had the aqueduct system, at the time of the determination, been in existence during the entire period in which water records are available for such area, and shall be determined jointly by the Territory’s and the Company’s hydrographers based on all available applicable water measurements and long term rainfall records;

The DEIS statement “that approximately 30% of the water in the License Area streams is derived from the privately-owned lands” is a significant water resource baseline metric. As such, the variables utilized to determine the “30%” are important to understand and verify. They need to be provide in this DEIS.

Response 32: A copy of the 1938 Agreement has been provided within the Final EIS as Appendix R. The 30% figure was agreed to between the BLNR and EMI at the end of 1987, to represent the amount of water originating from private (vs. State) lands in the 50,000-acre Collection Area, and was based on estimates of the average annual total yields from the streams in License Area. Prior to that time, the USGS provided a table in which USGS estimated, for each of the four license areas, the percentages of water estimated to have arisen on State land versus private land. This was explained in the testimony and exhibits submitted to CWRM throughout the contested case hearing on the IIFS petitions. Copies of relevant documents on this subject have been appended to the Final EIS as Appendices R-1, R-2, R-3, R-4, and R-5, and are further described in Section 3.3 of the Final EIS as shown on pages 3-24 to 3-25.

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Comment 33: *The ‘related calculation involving isohyet analysis of rainfall patterns’ referred to in Subsection 3.3 should be made available for public review and comment in this DEIS. This calculation should include the yield calculations as defined in the 1938 agreement: “...the arithmetical average annual water yield which would have been diverted from any given drainage area under consideration...”*

Response 33: Please see Response #32 above for an explanation of the calculations and related background information.

Comment 34: *This EIS needs to make available for public review and comment a detailed parcel listing & associated map(s) of the License Area’s ‘privately owned lands’ from which the 30% right to the stream water flow referred to in Subsection 3.3 is derived.*

Response 34: Figure 1-1 of the Draft EIS outlines in red the 50,000 acre water Collection Area and depicts in green that portion of the water Collection Area that is owned by the State (noted as the "License Area"), and depicts in yellow those lands that are partially owned by A&B and/or Mahi Pono. Figure 1-2 provides the TMK parcel numbers for the License Area (and these parcels numbers are also reflected in Table 1-1 and in the summary at page i), as these are the State properties under consideration through the Proposed Action. No more detailed parcel listings are required under HRS Chapter 343.

Comment 35: *This EIS should explicitly document the private land owner’s source of rights, if any, to divert License Area stream flow for private purposes, in light of the adoption of the State Water Code and the mandated protection of the Public Trust.*

Response 35: As discussed in Response #29 above, and as shown on pages 3-24 to 3-25, the 1938 Agreement clearly recognizes that EMI did not need a license from the Territory (now the State) to divert and convey in the EMI Aqueduct System water derived from privately owned watersheds within the water Collection Area. For purposes of the No Action (i.e., no Water Lease) alternative, it is reasonable to assume that, in the absence of a Water Lease, EMI will, *at best*, be able to continue to divert the approximately 30% of water that is estimated to represent the average annual amount that originates on private lands within the 50,000-acre Collection Area as outlined by Appendix R-5 added to the Final EIS as described in Response #32 above.

A detailed legal analysis of the 1938 Agreement is beyond the scope of assessing environmental impacts within this EIS. As discussed in Response #12 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the State-owned Nāhiku, Ke‘anae, Honomanū, and Huelo lands (License Area) for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including

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A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

The No Action alternative assessed in Section 3.3 EIS assumes that if no Water Lease were issued, the EMI Aqueduct System could continue to divert approximately 30% of the water available from the Collection Area, plus approximately 4.37 mgd from the privately owned lands between Honopou Stream and Māliko Gulch. That is because the rights under the 1938 Agreement are independent of the Proposed Action under consideration in this EIS.

Regarding your comment about the mandated protection of the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

Comment 36: *The EIS should state what volume percentage of the asserted 'privately owned lands' water rights are defined and documented as "appurtenant water rights", as well as the volume of water yield ascribed to this water right.*

Response 36: Please see Responses #29, 32, and 35 above, which explains the private landowner's rights to divert water from the Collection Area. A detailed analysis of the volume percentage of water that might be covered by any appurtenant rights is beyond the scope of assessing environmental impacts within this EIS. As discussed in Response #12 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 37: *The EIS should state what percentage of these private lands hold water rights only to the usufruct (riparian right) in each of the Lease Area Streams, as well as the volume of water yield ascribed to this particular water right.*

Response 37: Please see Responses #29, 32, and 35 above, which explains the private landowner's rights to divert water from the Collection Area. A detailed analysis of the volume percentage of water that might be covered by riparian rights is beyond the scope of assessing

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environmental impacts within this EIS. As discussed in Response #12 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B’s former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 38: *The EIS should examine and disclose the relative local financial impact of a foreign-owned (California) company, in comparison to the relative local financial impact of granting the lease to either a Hawaii based company, a Maui Water Authority, or a local nonprofit organization.*

Response 38: Under the Proposed Action, Mahi Pono will introduce new agricultural activity to the State of Hawai‘i, which will benefit the State by increasing food production, employment, payroll, profits for farm tenants and companies supplying goods and services, and tax revenues to the State and County of Maui as described in Sections 4.7.3 and 4.7.4 of the Draft EIS as well as Appendix H (Economic and Fiscal Impact Study) and Appendix I (Agricultural and Related Economic Impacts). While profits from Mahi Pono’s farming activities, when they exist, will be distributed to its investors, including but not limited to PSP, a Canadian pension fund, most of the economic benefits will remain in Hawai‘i. Please note that farming activity typically requires significant upfront investment, with much later returns. The capital for that investment is provided by Mahi Pono’s investors. Hence, the financial impact of a foreign-owned company is taken into account when assessing the Proposed Action.

Regarding your comment that this analysis should be compared with the financial impact of granting the Water Lease to a Hawai‘i based company, a Maui water authority, or local nonprofit, please note that Section 3.1.2 of the Draft EIS contemplates alternative ownership of the EMI Aqueduct System which has been supplemented based on the County’s TIG Report as shown on pages 3-19 to 3-20. As discussed in both the Draft EIS and the Final EIS, this alternative continues to appear speculative and not consistent with the objectives of the Proposed Action.

However, please note that the alternatives that were fully analyzed are those that were deemed reasonable to achieve the objectives of the Proposed Action, as per HAR § 11-200-17(f). The EMI Aqueduct System is owned by EMI and is not for sale or lease. The EMI Aqueduct System runs through both EMI-owned land and State-owned land. Through a water lease process, the BLNR does not have legal authority to require EMI to allow others to enter upon its lands or use the EMI Aqueduct System, and it would be impossible to operate the EMI Aqueduct System without access to the system in its entirety as more accurately described by the 1938 Agreement discussed in Responses #29, 32, and 35 above. The EMI Aqueduct System is owned by EMI, however, the EIS acknowledges that the some of the lands underlying the EMI Aqueduct System

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are owned by the State. Pursuant to the 1938 Agreement, the Territory of Hawai'i (now the State) granted perpetual easements to EMI for the placement of the EMI Aqueduct System. Therefore, it is unreasonable to assess the comparative impacts of alternatives that seem highly speculative if not outright impossible, such as granting the Water Lease to a "Maui Water Authority or a local nonprofit organization."

Comment 39: *The EIS should describe the expected fair-market cost of water to the County that would be provided via the Wailoa Ditch/Tunnel. It should also describe the potential impacts to the Upcountry domestic water users if the cost of the small annual percentage of Upcountry water (about 26% annually) that is supplied by the lease area were to rise significantly. Similarly, the EIS should evaluate the impact on Upcountry farmers if this cost were to rise significantly.*

Response 39: There are many factors which could affect the cost of water delivered to the County of Maui. The cost of water to the County of Maui will depend, in part, on the amount of the lease payment for the Water Lease, which will be established by the BLNR. An appraisal to determine the fair market value of the Water Lease will be conducted prior to issuance of the Water Lease. Our expectation is that the DLNR, on behalf of the BLNR, will commission, or approve the commissioning of, the appraisal. The cost of water to the County of Maui also depends on the operational costs of running the EMI Aqueduct System, including all costs of complying with applicable regulations and laws.

However, as discussed in 4.7.3 of the Draft EIS, under the Proposed Action (where the maximum amount of water is limited by the CWRM D&O and therefore below historical averages), the rate MDWS currently pays to EMI (\$0.06 per kgal) will increase because EMI's per unit operating cost will increase as a result of fixed costs being spread out over a lower volume of water diverted and possible higher lease payments to the State compared to historic payments. While it is anticipated that the delivery costs to the County of Maui will increase, the exact amount of the increase cannot be known until the Water Lease is finalized. However, the estimate analyzed in the Draft EIS assumed a year 2030 water service fee rate of \$0.08 per kgal. This figure was calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, the MDWS would pay an estimated \$214,600 per year to EMI. However, please note that this discussion in Section 4.7.3 of the Final EIS has been updated to take into account the latest equivalent per unit cost under the latest revocable permit as shown on pages 4-277 and 4-283.

The Draft EIS did address potential impacts to MDWS customers should the cost of water delivery through the EMI Aqueduct System to the MDWS rise significantly. County of Maui water service rates vary by class of users (i.e., residential, commercial, agricultural, etc.), but average approximately \$4 per kgal. Inasmuch as the same water rates are charged across the nine water systems in the County there are many factors that determine the water service rate.

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Due to the fact that water rates are not dependent on the service area a customer is located in, increases associated with increased water delivery costs from the EMI Aqueduct System and from new water source development for Upcountry Maui would affect MDWS ratepayers countywide, including domestic and agricultural users in Upcountry Maui. Moreover, as discussed in Section 4.7.3 of the Draft EIS an analysis conducted by Brown and Caldwell determined that the lifecycle cost of developing new water sources for Upcountry Maui customers would be \$34 per kgal, which far exceeds the current average water service rate of \$4 per kgal. Specifically, in Section 4.7.3 of the Draft EIS, it is stated:

Under the Brown and Caldwell analysis, the life-cycle unit cost of developing and operating wells is \$34 per kgal. It is noted that the life-cycle unit cost to develop new water for Upcountry Maui customers is high. In comparison, a similar analysis conducted for the Central Maui Water System showed a unit cost of less than \$10 per kgal, or less than one third the cost of Upcountry Maui water development (Brown and Caldwell, 2014). The total life-cycle cost for 7.95 mgd of new wells is \$1.2 billion. The life-cycle cost is expressed as the net present value of all the costs incurred over 25 years, including capital, operating, and maintenance costs.

Moreover, as discussed in Appendix I, from an agricultural perspective, should water costs significantly rise for Upcountry Maui water users, farming in Upcountry Maui would significantly decrease as many farms would relocate to Central Maui given the overall better agronomic conditions, cheaper rents, and cheaper water.

Comment 40: *The DEIS states that 7.1 million gallons per day of Upcountry Maui's water comes from the East Maui irrigation aqueduct system. This is VERY misleading, since only about 26 percent on an annual basis (depending on the year) is coming from the lease areas that are being analyzed in the EIS document. The rest is coming from other Mahi Pono lands, which are outside the proposed lease area, and are not the subject of this EIS. This statement needs to be corrected based on actual numbers based on CWRM water usage reports.*

Response 40: We respectfully disagree with your comment that this is misleading.

Approximately an average of 7.1 mgd is conveyed to MDWS at Kamole-Weir WTP and to the KAP from the EMI Aqueduct System via the Wailoa Ditch as discussed in Responses #5 to #13 above describing Section 2.1.3 and Section 2.1.3.1 of the EIS. This is approximately more than half ($\approx 54\%$) of the total surface water (13 mgd) delivered to the Upcountry Maui Water System.

Moreover, it is important to note that the other two surface water sources for MDWS to convey to the Upcountry Maui Water System are situated on private land owned by EMI, and MDWS'

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right to access this source on a long-term basis is contingent upon the issuance of the Water Lease as discussed in Responses #5 to #13 above.

In total, the delivery by the EMI Aqueduct System, and the two other sources situated on EMI land, average 13 mgd or all of the total surface water delivered to MDWS.

Comment 41: *Impacts to Hawaiian Homelands Water Supply. §11-200-16 HAR Content requirements: The environmental impact statement shall contain an explanation of the environmental consequences of the proposed action. The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, a statement shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.*

The current DEIS contains no specific information regarding the water reservation amounts from the East Maui lease area needed by DHHL. This information is now available and was publicly offered by DHHL staff at the Oct 9, 2019 BLNR meeting. These specific legally protected water reservations should be INCLUDED in the DEIS, and Mahi Pono water use plans adjusted accordingly to reflect this amount, in order for the public and agency comment process to be based upon accurate information. The DEIS also assumes in the Executive Summary that Mahi Pono can utilize the East Maui Water until the time that DHHL needs its reservation.

Response 41: Specific information regarding the Department of Hawaiian Home Lands' (DHHL) future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

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Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown on pages 2-4 to 2-7. As explained in on pages 2-4 to 2-7, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water, CWRM could act on a reservation request related to a proposed lease.

As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the Department of Land and Natural Resources' (DLNR) Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

While Mahi Pono's current farm plan assumes the full use of the water that can be diverted from East Maui streams after compliance with the CWRM D&O, Mahi Pono will be obligated to reduce elements of its farm plan, and thus the availability of crop, to accommodate the permanent reduction in available water resulting from DHHL's allocation. The Reduced Water Volume alternative described in Chapter 3 of the EIS provides an assessment of the impacts of less water being made available for the Proposed Action, including Maui Pono farm plan in the Central Maui agricultural fields. Specifically, consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

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You are correct that Section 2.1.1 of the Draft EIS stated, with respect to the DHHL reservation, that "*Until that reservation is physically claimed, however, it will be available for use by the lessee.*" That statement has been clarified in the Final EIS as shown on pages 2-4 to 2-7, as it is uncertain whether the DHHL reservation amount would be available to the lessee until such time as it is needed by DHHL. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

Please note that as discussed in Section 2.1.2 of the Draft EIS, under the Proposed Action, at full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd will be diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Comment 42: *The Mahi Pono Farm Plan figures presented in appendix I estimate that 68 mgd of East Maui stream water will be available for Mahi Pono crops after 22.7 percent system losses, and 7.1 mgd for the Maui County DWS system. No water is allotted for DHHL in the Mahi Pono Farm Plan calculations.*

Response 42: As noted in Response #41 above, the Draft EIS included a "sliding scale" analysis of the impacts of the proposed Water Lease being issued but permitting water diversions in an amount less than what is allowed under the CWRM D&O in Section 3.2.1 of the Draft EIS. The sliding scale quantified effects based upon each 1 mgd reduction in water, and therefore provides the analytical framework for assessing the impacts of the Water Lease less the DHHL reservation amount. We also note that the Draft EIS was clear in recognizing that the water available to the lessee would be reduced to take into account the DHHL reservation. Specifically, Section 3.4.13 states:

For each 1 mgd less of surface water made available to the Central Maui fields, there is a related reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture, a reduction in direct sales on Maui of about \$1.7 million per year, a reduction in direct-and indirect sales on Maui and O'ahu of about \$3.3 million per year, about 8.5 fewer direct jobs on Maui and about 12 fewer direct-and-indirect jobs on Maui and O'ahu, and a reduction in State revenues of about \$50,000 per year.

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Regarding your comment the 22.7 percent system losses, please note that this does not occur in the EMI Aqueduct System but rather in the Central Maui Field Irrigation System, beyond Kamole-Weir (the point at which water is conveyed to MDWS). This clarification has been made throughout the Final EIS as shown on pages 2-11, 2-27, 3-12, and 4-76.

Comment 43: *A discussion of whether it is legal for A&B/Mahi Pono to assume that the DHHL “water reservation” can be utilized by Mahi Pono until it is “needed by DHHL” should also be included in the DEIS. It is our understanding that the Waiola o Molokai vs DHHL case dealt with a similar situation, and the DHHL prevailed.*

Response 43: The issue raised in your comment above was addressed by the Supreme Court of Hawai‘i in *In Re Wai‘ola O Moloka‘i*, 103 Hawai‘i 401, 83 P. 3d 664 (2004), but the facts are very different from the current situation considered in this EIS. That case dealt with a DHHL reservation in an aquifer in a designated groundwater management area. DHHL contended that the reservation was an “existing legal use” entitled to priority over the requested use of ground water use permit applicants. The Supreme Court disagreed, stating that while DHHL’s “reservation” was a public trust purpose that was entitled to protection, that it did not constitute an “existing legal use.” More importantly, in the related subsequent case of *In Re Kukui (Molokai), Inc.*, 116 Hawai‘i 481, 174 P3d. 320 (2007), the Supreme Court ruled that CWRM, was “by no means, categorically precluded from approving uses which may compromise DHHL’s reservation, so long as the Commission’s decision is ‘made with a level of openness, diligence, and foresight commensurate with the high priority these rights command under the laws of our state.’” *Id.* at 116 Hawai‘i 491, 174 P.3d 330.

As discussed in Response #41 above, the EIS has been clarified to indicate that it is unknown whether the DHHL reservation amount can be used by others until such time as DHHL has a need for the water. We further note that we are not aware of any statutory restriction that would prevent the use of the DHHL reservation and point out that the use of the reserved water may be addressed through the CWRM reservation process or BLNR lease process.

Comment 44: *There is no indication in the DEIS how the Mahi Pono Farm Plan will be adjusted to accommodate the 11.5 mgd of East Maui Water that DHHL is reserving. The EIS should plainly discuss this, as well as whether such adjustment would be based upon a need for more water over the first few years of planting, and less water when crops are established, using regenerative agricultural methods, as was envisioned in the 2018 CWRM Decision and Order:*

“115. The estimated water requirements will change not only because some potential partners and lessees are expected to rotate multiple crops that could potentially have different crop coefficients but also because water requirements could change significantly through the use of regenerative agricultural methods.”

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Response 44: As mentioned above in Response #41, the Draft EIS was clear in recognizing that the water available to the lessee would be reduced to take into account the DHHL reservation and as discussed in Section 2.1.4 of the Draft EIS that the Mahi Pono farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, which includes the DHHL water reservation. Moreover, as noted above in Response #41, the sliding scale quantified effects based upon each 1 mgd reduction in water, and therefore provides the analytical framework for assessing the impacts of the Water Lease less the DHHL reservation amount.

Regarding your comment about the water requirements of the proposed crops in the Mahi Pono farm plan, water requirements were based on crop coefficients. Specifically, Table 2-1, which has been revised in the Final EIS as Table 2-2 as shown on page 2-29 shows the water requirements of the proposed crops.

It should be noted that the water need for agriculture will change over time, but that change is based on so many unknown factors (soil conditions, crop spacing, etc.) that it would be speculative to predict the reduction in water over time. This is true even taking into account the regenerative agricultural practices that Mahi Pono will implement, such as the widespread use of compost and weed barriers. It is noted that if the crops require less water over time due to the implementation of these regenerative agricultural practices, then Mahi Pono intends to plant additional crops in areas that are currently planned to be unirrigated pasture due to the lack of enough water to irrigate all 30,000 acres of land. Hence, under the Proposed Action, at full build-out, all of the maximum allowable water available for diversions would continue to be diverted.

Comment 45: *If Mahi Pono Water demand is expected to decrease over the years, as suggested by the CWRM 2018 review, a timetable for restoration of non-IIFS streams in the Huelo Lease area should also be discussed in the EIS.*

Response 45: The CWRM D&O was issued in June 2018 and included the A&B diversified agriculture plan. Mahi Pono did not purchase the Central Maui agricultural fields from A&B until December 2018, which was after the issuance of the CWRM D&O. The Mahi Pono farm plan is not anticipated to have a decrease in water demand over the years, though at full build-out, it will require significantly less water than utilized when sugarcane was cultivated on these same lands. So while there is a total decrease in water demand over historical sugar operations, as with any new and growing farm operation, the water demand of the Mahi Pono farm plan is expected to increase over the years until full build-out. Moreover, as discussed in Response #44, if more water were to become available in the future, Mahi Pono intends to plant additional crops in areas that are currently planned to be unirrigated pasture due to the lack of enough water to irrigate all 30,000 acres of land.

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Comment 46: *Lack of Accurate Information re. the Viability of the Mahi Pono Farm Plan. The EIS should acknowledge that Mahi Pono has no track record of successful farming under Maui conditions.*

Response 46: The Mahi Pono team has significant experience cultivating diverse crops and managing cattle operations on more than 100,000 acres on the continental U.S. Also, the company has established market channels, and substantial financial resources. In its first 18 months of existence, Mahi Pono has hired over 200 workers from Maui, most of whom have farm experience on the island. It is acknowledged that Mahi Pono is new to farming in Hawai'i. However, they come with significant farming credentials that bode well for a diversified agricultural undertaking of the size contemplated for the Central Maui agricultural fields. If Mahi Pono is successful, Central Maui will be able to remain in cultivated agricultural open space, and be put into use in a manner consistent with numerous State and County land use plans and designations.

Comment 47: *A&B's SEC filings inform their shareholders of the risk that plans for diversified farming on their Maui lands may not work out, even given the Company's long history of farming. A&B's 2015 SEC filing states:*

"The Company is currently evaluating several categories of replacement agricultural activities in the transition to the diversified model, including but not limited to energy crops, agroforestry, grass finished livestock operations, diversified food crops/agricultural park, and orchard crops. There is no assurance that the Company's replacement agricultural activities will be economically feasible or improve the Agribusiness segment's operating results."

The EIS needs to provide the same disclaimer, and should not predict the entire success of Mahi Pono farming operations based on how much East Maui water is sent to Central Maui.

Response 47: A&B's SEC filings are not within the scope of the EIS, nor does HRS Chapter 343 require such a disclaimer about the financial feasibility of a particular undertaking. As discussed in Response #12 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

It seems entirely evident that the Mahi Pono farm plan will require water, and the more reliable access to water that can be provided to the Central Maui agricultural fields, the greater the ability for Mahi Pono (or any farmer) to be responsive to the ever-changing agricultural market

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demands while also being sensitive to the existing local farming community. However, the EIS provides two versions of the Mahi Pono farm plan. One version anticipates farming under a Water Lease that authorizes diversions in the amount consistent with the CWRM D&O. The other version contemplates the farm plan in the event that there is no Water Lease. Please see Chapters 2 and 3 of the EIS. As such, the EIS does not "predicate the entire success of Mahi Pono farming operations on how much east Maui water is sent to Central Maui" as stated in your comment.

Please also note as discussed in Response #46 above that, while success can never be predicted for any business or organization, Mahi Pono is well positioned to take on the challenge of putting Central Maui back into sustainable agriculture.

Comment 48: *The EIS needs to provide accurate information about the benefits of Central Maui farming. The numbers provided for proposed Mahi Pono profits and past performances of HC&C sugar do not seem logical:*

(Executive Summary, page v) "Mahi Pono farm plan is projected to generate more than 338 pounds per year of crops, generating \$155.9 million per year in annual food sales and \$329.5 million per year in combined direct and indirect sales." This would mean each pound of crop brought a return of \$461,242. The EIS needs to describe what kind of crop would bring this type of return, or correct what appears to be an obvious error in the calculation.

Response 48: The production figure in the Executive Summary of the Draft EIS should read 338 million pounds per year, not 338 pounds. This was a typo and has been corrected in the Final EIS, including the Executive Summary as shown on page xii.

However, please note that Section 4.7.3 and Section 4.7.4 of the Draft EIS correctly describes accurate information regarding the benefits of the Mahi Pono farm plan. At Section 4.7.3:

At full operations, the Mahi Pono farm plan will cause a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops. Annual sales are expected to reach \$155.9 million. The pastures would support a cattle herd of about 7,300 cow-and-calf animal units, produce over 4,300 calves per year, and generate revenues of about \$4.8 million per year. The solar farm would generate about 82,125 mW of electricity per year, with revenues of about \$8.2 million per year. Combined farm and energy revenues would reach \$168.9 million per year in direct sales (far exceeding the 2006 revenues from sugar production of \$101 million, and the \$116 million average for the 2008 to 2013 period).

And at Section 4.7.4:

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At full development, the Mahi Pono farm plan would result in a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops.

Impacts related to agricultural economics are discussed in detail in Section 4.7.4 of the EIS based on findings in Appendix I. Please refer to Section 4.7.4 and Appendix I to see discussions regarding the numerous benefits anticipated as a result of the Proposed Action. In summary, at full build-out, the Mahi Pono farm plan is anticipated to produce a significant amount of crops for both local consumption and export generating significant beneficial economic and fiscal impacts, providing numerous direct and indirect jobs, State and County tax revenues, etc.

Comment 49: *Table 6 in Appendix I lists “recent sugar” payroll of \$68,000,000 a year. HC&S had 675 workers when they announced that sugar would shut down in 2016. Did those workers earn an average of \$100,740 a year (\$68 mil divided by 675)? The EIS needs to provide a factual basis for this claim, and all claims, made in the document.*

Response 49: As described in Section 4.7.4 of the Draft EIS and shown in Table 5 (not Table 6) of Appendix I, the employment figure for Recent Sugar (Years 2008 to 2013) was 620 direct jobs earning \$34.3 million per year, or an average of \$55,295 per job. The \$68 million payroll is for both direct and indirect jobs.

The category of indirect payroll covers fringe benefits such as medical and dental plan premiums, long-term disability and group life insurance premiums, contributions made to retirement plans, vacation payments, post-retirement expenses, and payroll taxes; i.e., things paid for by the company for the benefit of the employee. It should also be noted that only 15-20% of the employees on payroll were salaried staff including agronomists, chemists, engineers, and accountants. Most of the other employees worked significant overtime at 1.5 and 2 times the published pay rates. Section 4.7.3.4 of the Final EIS has been revised to clarify the components of indirect payroll. See page 4-284 of the Final EIS. The payroll figures were obtained from A&B as noted in the list of references to Appendix I.

Comment 50: *The potential “recent sugar profits” presented in Table 6 of Appendix I also needs additional information. A&B’s SEC filings (10K reports) show a very different range of “profits” from 2009 to 2015 – the most recent era of sugar growing. In only 4 of those 7 years did the sugar operations show a profit (2010-2013.) The other three years showed sizable losses. The DEIS says that all these years (2008-2013) had poor crop yields due to low rainfall, but 2014 and 2015 also showed poor returns. The DEIS needs to discuss this evidence that water availability is not the only factor that determines crop success in Central Maui. Only one year*

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(2011) had a profit of \$22 mil. The average of the 4 profitable years was \$14. 9 mil. The figures in the EIS should reflect accurate amounts, not cherry pick one promising year.

Response 50: The scenario “Recent Sugar” covers the years 2008 to 2013, and the profits are derived from both direct sales and indirect sales related just to HC&S (Maui sugar operations). The numbers in A&B’s 10-K reflect not only the Maui sugar profits, but also the company’s total agribusiness operations combined, including Kauai Coffee, KT&S, A&B Fleet Services, and A&B’s renewable energy projects, which were much broader than just HC&S. Therefore, the numbers are not comparable. The figures used in the EIS were not “cherry-picked” but rather chosen to reflect just Maui sugar operations, as is relevant for this EIS. Moreover, Appendix I of the Draft EIS acknowledged that “This period is not typical of sugar operations in that rainfall was below normal, water returned to East Maui streams was large enough to adversely affect sugarcane operations, and HC&S struggled to achieve profitable operations.” Mahi Pono’s plan for diversified agriculture in Central Maui is entirely different from HC&S sugarcane farming on those lands, and as stated in the Draft EIS, the Mahi Pono farm plan is a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e. orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community.

Comment 51: *A&B’s 2015 10-K statement (filed with the Securities & Exchange Commission) acknowledges that the four state lease areas supplied “approximately 58 percent of the irrigation water used by HC&S “and “A&B also holds rights to an irrigation system in West Maui, which provided approximately 15 percent of the irrigation water used by HC&S over the last ten years.” This would indicate that 27 % of irrigation water came from A&B wells.*

Response 51: Water from the West Maui irrigation system is beyond the scope of the EIS. That water does not contribute to the irrigation of the Central Maui agricultural fields. The EIS looks at the water diverted from East Maui streams through the EMI Aqueduct System. The EMI Aqueduct System does not comingle water with the West Maui irrigation system as they are completely separate systems. Moreover, the source of water for the West Maui irrigation system comes from privately owned lands and is not from State-owned lands. Hence, the West Maui water is not be included in this analysis.

Regarding the use of well water, Draft EIS Section 2.1.4 (Central Maui Field System) explains:

In addition to the surface water imported from the EMI Aqueduct System to the Central Maui field irrigation system, the irrigation infrastructure includes fifteen brackish water wells that can supplement surface water to approximately 17,200 acres of the plantation at the lower elevations (CWRM D&O, FOF 738). These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived

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from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739).

Draft EIS Figure 2-5 (Central Maui Infrastructure Map) identifies the wells in the Central Maui agricultural fields. However, please note that Section 2.1.4 has been revised in the Final EIS to more accurately describe the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono, and clarifies that only 10 of the 15 wells are on Mahi Pono lands and thus available for use by Mahi Pono, as shown in pages 2-24 to 2-25 and pages 3-3 to 3-4 of the Final EIS.

The reference to 15 brackish wells was derived from the CWRM D&O, FOF 738, as that was the number of brackish wells that A&B utilized during its sugar cane operations. However, one of the 15 wells referred to, State Well No. 5128-002, does not serve the Central Maui agricultural fields and four of the other brackish wells are on lands that are not owned by Mahi Pono. As such, Mahi Pono has access to only 10 such wells. Draft EIS Figure 2-5 has been revised, as shown on page 2-24, to more accurately depict the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields.

Comment 52: *The EIS needs to include a list and map of the A&B/Mahi Pono wells available to help irrigate the Mahi Pono fields and the latest chloride tests and pumping abilities of each of those wells. The map should also depict the historical and prospective areas that can be irrigated using well water.*

Response 52: Please see Response #51 and on page 2-24 referred to therein regarding a figure depicting the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields.

In response to your request for chloride numbers for the Mahi Pono wells, please see the table below, which has been added to Section 4.2.2 of the Final EIS as shown on page 4-75.

State Well No.	TMK Number	Installed Pump Capacity	Typical Range of Chlorides (MG/L) from	CWRM Delineated Aquifer
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		(MGD)	2003 through 2014 ¹	System
4825-001	(2) 3-8-004:001	20.448	225 to 350	Pā'ia
5226-002	(2) 3-8-006:001	24.048	350 to 550	Kahului
5224-002	(2) 3-8-003:004	15.120	350 to 550	Pā'ia
5323-001	(2) 3-8-001:006	20.016	No data	Pā'ia
5424-001	(2) 3-8-001:007	5.760	400 to 700	Pā'ia
5522-001	(2) 2-5-005:021	8.640	350 to 525	Pā'ia
5422-001	(2) 2-5-005:054	10.080	350 to 525	Pā'ia
5422-002	(2) 2-5-005:020	11.664	325 to 475	Pā'ia
5321-001	(2) 2-5-005:019	30.240	400 to 1600	Pā'ia
5520-001	(2) 2-7-004:032	10.080	900 to 1600	Ha'ikū

Please note that the salinity levels fluctuate and therefore a range was provided.

Regarding your comment that a map should depict the historical and prospective areas that can be irrigated using well water, the available brackish groundwater will be used similar to how it was in the past with regards to how the groundwater is applied as discussed in Section 2.1.4:

...brackish water wells that can supplement surface water to approximately 17,200 acres of the plantation at the lower elevations (CWRM D&O, FOF 738). These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739). This pump station was designed and built to be an emergency water source for the high-elevation fields in the event of extreme drought.

¹ There is limited salinity data prior to 2003 and after December 2014, surface water for irrigation use rapidly declined as A&B ramped down operations prior to closing in 2016.

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Please note that a figure has been produced to correspond with the above text in Section 2.1.4 of the Final EIS as shown on page 2-26.

Comment 53: *The EIS states that Mahi Pono's farm plan will use less water than the HC&S sugar operations, and provides elaborate tables in Appendix I. The Mahi Pono Farm Plan is one plan, which includes around 34,000 acres irrigated by both East Maui and West Maui stream waters. The EIS content rules do not allow for segmentation of separate parts of the same project. The 4,000 acres of fields irrigated by West Maui Water should be included in the overall analysis of how much water is needed from which source to have a viable Mahi Pono Farm Plan. The EIS needs to clearly describe the overall Mahi Pono Farm Plan, and indicate what amounts and proportions of water for the farm plan will come from East Maui streams, West Maui streams and Mahi Pono wells.*

Response 53: It is incorrect to say that the Mahi Pono farm plan is one plan that is irrigated by both East Maui water (through the EMI Aqueduct System) and West Maui stream water. The Central Maui agricultural fields owned by Mahi Pono and repeatedly identified in the Draft EIS are comprised of approximately 30,000 acres of land and can be irrigated by water from the EMI Aqueduct System. The Mahi Pono farm plan, which is described in numerous places in the Draft EIS, including Table 2-1 (Mahi Pono Farm Plan) provides a plan for diversified agriculture over approximately 30,000 acres in Central Maui. As noted above in Response #44 Table 2-1 of the Draft EIS also indicates what water is expected to come from surface water through the EMI Aqueduct System and what amounts are expected to come from groundwater.

We respectfully disagree with your view that the EIS, which fully assesses the impacts of the proposed Water Lease, the water from which would be used for irrigation purposes in Central Maui, domestic and irrigation purposes in Upcountry Maui, is somehow taking a segmented approach to environmental review. The Proposed Action is not a part of a larger action and there is no improper segmentation. Segmentation occurs when an applicant proposes more than one "action" that triggers the environmental review requirements under HRS § 343-5. If only one action is proposed, there cannot be segmentation. Here, there is only one "action" triggering Chapter 343 review -- the proposed Water Lease. There is no "action" being proposed with respect to the 4,000 acres in West Maui, and the 4,000 acres are part of an entirely separate farming operation, and that farming operation is not irrigated by the EMI Aqueduct System and is not dependent upon the Water Lease. Further, the 30,000 acres of former sugarcane fields that are being converted to diversified agriculture under Mahi Pono's farm plan will not receive any diverted stream water from West Maui, and the 4,000 acres in West Maui will not receive any diverted stream water from East Maui. The West Maui fields are a stand-alone agricultural operation with clear independent utility and are outside of the scope of this EIS for the Water Lease.

Comment 54: *Public Trails: The draft EIS is incomplete because it does not include an inventory of roads and trails in the Ko'olau Forest Reserve. HRS 264 (Public Highways and Trails) protects public right-of-way on roads and trails owned by the state. When the Ko'olau*

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forest reserve was created, all roads and trails in the forest reserve became protected rights-of-way. The draft EIS needs to be extended to show the protected roads and trails in the Ko'olau Forest Reserve.

Response 54: The Draft EIS included suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps. See Draft EIS Figures 4-28 (East Maui Flood Insurance Rate Map) and 4-2 (USGS East Maui Topography Map), as well as numerous other figures and maps. Requirements, if any, under HRS Chapter 264 (Highways) are outside of the scope of an assessment of environmental impacts under HRS Chapter 343. With regard to the historic trails and roads that are within the License Area, Section 4.5 of the Final EIS as well as Appendix E (Archaeological Literature Review and Field Inspection) have been revised to include the current inventory of roads and trails in the License Area as shown on pages 4-147 to 4-149. CSH completed a geographic analysis of trails and roads that appear within the License Area as depicted on maps between 1869 and 1992 and available to the public domain. The majority of roads and trails within the License Area are associated with access to the EMI Aqueduct System and these road and “ditch trails” are likely contemporary with the construction of the EMI Aqueduct System.

Figure 4-39 has been added to the Final EIS to correspond with the above text (Figure 48 in Appendix E).

Furthermore, the various public recreational facilities, hiking trails, and hunting areas in the License Area, including access points, are identified in Section 4.8 of the EIS and Figures 4-37 and 4-38 of the Draft EIS (Figure 4-40 and 4-41 in the Final EIS). However, please note that Section 4.8 of the Final EIS has been updated to include more recreational facilities and an accurate discussion regarding access into the License Area as it relates to recreational activities as shown on pages 4-305 to 4-309.

Comment 55: *HRS 171-35 (Lease provisions) requires leases to protect rights-of-way and access to other public lands. The draft EIS needs to be extended to show how the proposed water lease protects rights-of-way and access to other public lands. The Hawaii Supreme Court has ruled (1908 19 H. 168) that the lease of public land cannot affect a public right-of-way existing across it.*

Response 55: HRS § 171-35 does not require a lessee to protect rights of way and access to other public lands. To the extent that HRS § 171-35 (Lease provisions; generally) applies to a water lease, it gives the BLNR discretion on whether and how to address reservations of rights of way and access to other public lands. The section of the law you cited provides as follows:

Every lease issued by the board of land and natural resources shall contain:

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1. *The specific use or uses to which the land is to be employed;*
2. *The improvements required; provided that a minimum reasonable time be allowed for the completion of the improvements;*
3. *Restrictions against alienation as set forth in § 171-36;*
4. *The rent, as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;*
5. *Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and*
6. *Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the state constitution and of this chapter.*

The issue in the case you cited from the Supreme Court of the *Territory of Hawai‘i, Robello v. Maui Cnty.*, 19 Haw. 168 (1908) was whether the easement of the public in an existing highway was extinguished by a lease to a private party when a new road was planned at some time in the future. The Court held that the lessee took his lease with full knowledge of the existing highway due to the reference on the map and actual knowledge of the existence of the road and was therefore not allowed to erect fences blocking the old road. The Court further held that no injunction should have been granted restraining the County from removing lessee's fences to keep the public road open. This case is not applicable to the proposed Water Lease.

A new condition included in the 2020 and 2021 water revocable permits required the removal of the Hanawā NAR from the revocable permit area and calls for A&B to continue discussions with DOFAW to identify additional forest reserve lands to be removed from the License Area. The Hanawā NAR consists of approximately 7,500 acres and is further discussed in Section 1.3.1 of the Final EIS as shown on page 1-2. It should be noted that no portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the revocable permit area will result in additional public access because the NAR rules restrict public access. However, this may not be true for other areas that DOFAW may want the BLNR to withdraw from the License Area going forward.

Comment 56: *The draft EIS is incomplete because it does not include an inventory and history of roads and trails on East Maui Irrigation land. HRS 264 (Public Highways and Trails) requires that historic roads and trails are protected rights-of way. The draft EIS needs to be extended to show which historic roads and trail are protected.*

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Response 56: As noted above in Response #54, Section 4.5 of the Final EIS, as well as Appendix E (Archaeological Literature Review and Field Inspection), have been revised to include the current inventory of roads and trails in the License Area as shown pages 4-147 to 4-149. CSH completed a geographic analysis of trails and roads that appear within the License Area as depicted on maps between 1869 and 1992 and available to the public domain. The majority of roads and trails within the License Area are associated with access to the EMI Aqueduct System and these road and “ditch trails” are likely contemporary with the construction of the EMI Aqueduct System.

Comment 57: *HRS 115 (Public Access to Coastal and Inland Recreational Areas) requires public rights of way to be provided at reasonable intervals to inland recreational areas. Many parts of the Ko'olau Forest Reserve are land-locked by East Maui Irrigation property. The draft EIS needs to be extended to show public rights-of- way across EMI property to the Ko'olau Forest Reserve.*

Response 57: We acknowledge your comment regarding HRS Chapter 115, but we do not view this statute as applicable to the environmental review required under HRS Chapter 343. HRS § 115-2 (Acquisition of lands for public rights-of-way and public transit corridors) provides “*When the provisions of section 46-6.5 are not applicable, the various counties shall purchase land for public rights-of-way to the shorelines, the sea, and inland recreational areas, and for public transit corridors where topography is such that safe transit does not exist.*” The County of Maui has not purchased a public right-of-way from the State or from EMI. Moreover, the provisions of HRS § 46-6.5 are not applicable. That section of the law applies when there is a subdivision into six or more lots, parcels, units, or interests. No subdivision is contemplated in connection with the proposed Water Lease. In any event, public access within portions of the License Area has been provided, as discussed in Section 4.8 of the Draft EIS, and it is expected either that public access will continue if the scope of the License Area remains the same, or, if the License Area is reduced, that public access within the former License Area lands will be dictated by a State agency. However, please note that Section 4.8 of the Final EIS, as noted in Response #54, has been revised as shown on pages 4-305 to 4-309 to include more recreational facilities and an accurate discussion regarding access into the License Area as it relates to recreational activities.

Comment 58: *The Division of Forestry and Wildlife, in their December 19, 2016 letter, included in the draft EIS, says, “Thus the Division recommends that the areas to be conveyed for a water license be done so through a land agreement that is limited to the infrastructure required for maintenance and conveyance of water, and that any terms of any agreement established for the delivery of water ensure unrestricted public access to the reserves and any state owned roads and trails.” The DEIS needs to address the positive impacts of implementing this recommendation as part of a considered Alternative action.*

Response 58: Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that

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could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access to areas that are not within the License Area. Please also see Response #55 regarding the revised License Area under the most recent revocable permits and projections related to the geographical extent of the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding impacts to the areas that would allow for more public access. Moreover, impacts of the Modified Lease Area alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories.

Comment 59: *Stream and Ocean Assessment (appendix B)*

Appendix B and the DEIS conclude that East Maui stream flows don't affect conditions for marine life in East Maui, and that East Maui has the wrong ocean conditions to have substantial fish populations. Appendix B offers these conclusions even though it includes no survey of ocean fish, and measures water chemistry at only 7 of the 36 streams in the lease area.

Response 59: Your comment about Appendix B stating that the East Maui has the wrong ocean conditions to have substantial fish populations is unclear. Nowhere is this stated in Appendix B or the Draft EIS. Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean

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in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams

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determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83.

Comment 60: *Kumupono Assoc. study of East Maui: "Wai o ke Ola – He Wahi Mo'olelo no Maui Hikina" was prepared for A&B /EMI in 2001, and provides much historic and contemporary discussion of the robust presence of marine life along east Maui coasts and longtime dependence of East Maui communities on the sea for food supplies. The connection of fresh water stream flows to algae that feeds marine life is well established.*

The conclusions of Appendix B are erroneously used throughout the DEIS to justify the "lack of impacts" from EMI's proposed Alternative 1: diverting all the East Maui streams to the extent permitted by the 2018 CWRM D&O. The EIS needs to acknowledge that an increase of diversion from present levels will impact ocean fisheries, describe those impacts, and propose mitigations.

Response 60: Regarding your comment about the Kumupono Assoc. study of East Maui, please note that this resource was used in the Archaeological Literature Review and Field Inspection (LRFI) (Appendix E) and the Cultural Impact Assessment (Appendix F), both of which were conducted in support of the EIS.

We respectfully disagree with your comment that the conclusion of Appendix B is erroneously used throughout the Draft EIS. As stated in Response #59 above, the collected data presented in Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, because the nutrient concentrations in the ocean do not change substantially

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due to stream diversions as proposed under the Water Lease, there is no pathway for fishing to be negatively impacted. This analysis means that impacts to ocean fish are negligible.

Moreover, please note that both the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) and the HSHEP model (Appendix A) involved field work in East Maui whereas the Kumupono Assoc. study of East Maui did not. The Kumupono study is more comparable to the CIA (Appendix F), involving interviews of East Maui residents and their recollections and perceptions. The CIA also notes that several commenters to the Draft EIS stated that they have observed an increase in fish returning to the nearshore coastal environments since the cessation of sugarcane operations in 2016. The CIA (CIA Section 7.5.2) has been updated to include information in the analysis of cultural impacts, specifically in the analysis of impacts to freshwater ecosystems, as summarized in Section 4.6 of the EIS, see pages 4-245 to 4-247 of the Final EIS.

Moreover, as noted within the CIA, the preferred method of fishing was open ocean fishing for the people who lived along the coast of East Maui based on background research conducted by Cultural Surveys Hawai'i (CSH) (*Ka 'Oihana Lawai'a: Hawaiian Fishing Tradition* by Daniel Kahā'ulelio (2006)). Land Commission Awards analyzed by CSH also indicate that claims were made for fresh water and off-shore fisheries.

Comment 61: *Flora and Fauna Review (Appendix C). This brief (4 days supposedly covering 33,000 acres on the ground and 1 day in the air) drive-by review of flora and fauna is entirely inadequate to inform decision makers of the impacts of the proposed action.*

Response 61: Regarding your comment about the length of time to conduct physical surveys related to the flora and fauna resources, ground and aerial surveys were conducted in 2017 and 2018 by SWCA to field-verify vegetation types and species found during previous surveying and mapping efforts. It was determined that the HIGAP vegetation data layer produced by Gon et al. (2006) was highly representative of the vegetation found in the "Study Area." Please note that the SWCA report, provided as EIS Appendix C, defined the "Study Area" as the collective License Area and the 30,000 acres of agricultural land that it referred to as the "Service Area." The HIGAP mapping data was used to estimate species distributions and potential impacts for the entire 33,000-acre License Area. Threatened and endangered species were categorized by each species' potential to occur in each vegetation type based on habitat needs. Methods have been further clarified in Appendix C, as summarized in Section 4.4 of the Final EIS as shown on page 4-113.

Comment 62: *In addition, the following deficiencies in the DEIS need to be corrected: None of the endangered damselfly populations seen by DAR surveys in 2005-06 were seen. Are they no longer found in the 33,000 acre area, or were they just missed by the superficial review?*

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Response 62: Regarding your comment that none of the endangered damselfly populations seen by DAR surveys, please note as discussed in Section 4.4.2 of the Draft EIS:

Twelve invertebrates were observed during the surveys, consisting of the Blackburn's damselfly (Megalagrion blackburni), Hawaiian upland damselfly (Megalagrion hawaiiense), citrus swallowtail butterfly (Papilio xuthus), Monarch butterfly (Danaus plexippus), housefly (Musca domestica), smaller lantana butterfly (Strymon bazochii), mud dauber (Sceliphron caementarium), wandering glider (Pantala flavescens), green darner (Anax junius), Aedes mosquito (Aedes sp.), walking stick (Sipyloidea sipyilus), and witch moth (Ascalapha odorata). All these invertebrates are common in East Maui.

While the endangered damselfly species were not observed, damselfly species were observed during the survey conducted by SWCA. Moreover, it is acknowledged that other species of damselfly are known to, or may, occur within the License Area as indicated by Table 4-5 of the Draft EIS. However, please note that Table 4-5 of the Draft EIS (Table 4-10 in the Final EIS) has been revised to include the Blackburn's sphinx moth, which the United States Fish and Wildlife Service (USFWS) indicated may occur in the License Area. Moreover, during the field work conducted by Trutta in connection with the preparation of the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model, pictures of damselfly were captured and are included in Appendix A.

Comment 63: *No plant list was included in the survey report.*

Response 63: We respectfully disagree with your comment that the survey report included as Appendix C of the Draft EIS did not include a plant list. Please note that Table 4 of Appendix C includes a list of endangered or threatened plant species with critical habitat in the License Area. This table has been added to Section 4.4.1 of the Final EIS as shown on pages 4-114 to 4-117.

Please note that for the purposes of the report included as Appendix C to the EIS was not to inventory the entire License Area but rather verify an existing description HIGAP remained valid. The results determined that the HIGAP vegetation data layer was highly representative of what is present in the License Area. The HIGAP vegetation layer describes 19 vegetation cover types within the License Area which are described in detail in Table B-1 of Appendix C in the Draft EIS.

Comment 64: *The Survey does not refer to baseline data available from the extensive 1985 mapping of the East & West Wailuaiki stream basin area that was done as part of a Proposed Hydroelectric plant EIS (Kepler, 1985)*

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Response 64: Regarding your comment about the 1985 EIS regarding East and West Wailuāiki streams, please note that this was reviewed by SWCA in response to this comment and no changes were required to the report included in Appendix C to the EIS or to the EIS text.

Comment 65: *The Flora and Fauna survey also included the 30,000 acres of potential farm lands (referred to as the “use area”) in the 5 day visit and did a poor job of describing impacts there.*

Response 65: Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS that was prepared by SWCA also included a survey of the approximately 30,000 acres of agricultural land in Central Maui that SWCA referred to as the "Service Area" (not the "use area" as you stated in your comment).

We respectfully disagree with your comment that the Terrestrial Flora and Fauna Technical Report did a poor job describing impacts in the Central Maui agricultural fields as it relates to the Proposed Action. The fields have been in agricultural use for over a century and under the Proposed Action would remain under agricultural use.

Comment 66: *It was not clear if the gulches in the “use area” were surveyed - they often serve as habitat areas.*

Response 66: The SWCA report clearly stated that area they designated as the "Service Area" included approximately 36,000 acres, consisting of approximately 30,000 acres of agricultural land, and approximately 6,000 acres in roads, gulches, and patches of uncultivated land. Please note that SWCA updated the description of the “Service Area,” which includes gulches, in Section 5.1.3.3 of Appendix C as follows: *"The gulches in the Service Area are composed of mostly non-native and/or invasive species. Along with the surrounding area, the gulches have been heavily impacted by prior and current land uses, such as residential and agricultural developments."*

Comment 67: *No acoustical survey for native bats was done at either survey location.*

Response 67: Regarding your comment that no acoustic survey was done to detect native bats, it was not within the scope of the EIS to conduct an acoustical study in Central Maui. It is known that the Hawaiian hoary bat occurs within this region. As noted in Section 4.4.2 of the EIS and in Appendix C, mitigation to address the potential of impacts to Hawaiian hoary bat include:

If felling of standing trees occurs during the bat breeding season, direct impacts could occur to juvenile bats that are too small to fly but too large to be carried by a parent. To minimize this impact, no trees taller than 15 feet (4.6 m) should be trimmed or removed between June 1 and September 15.

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and

The use of barbless top-strand wire is recommended for all fence construction to avoid entanglement of Hawaiian hoary bat.

Moreover, please note that the above mitigation measures are also consistent with what the USFWS provided in their Draft EIS comment letter regarding the Hawaiian hoary bat.

Comment 68: *In section 5.2.3, the survey reported that no reptiles or amphibians were detected, but hikers regularly encounter a very small frog at Hanawi stream near the Wailoa ditch.*

Response 68: You are correct that the Terrestrial Flora and Fauna Technical Report provided as Appendix C noted that no reptiles or amphibians were detected during the ground surveys conducted. Moreover, it is noted that there are not any amphibians or terrestrial reptiles that are native to Hawai'i. Hence, any amphibians or terrestrial reptiles within the License Area are considered invasive species. However, please note that Trutta Environmental Solutions did observe amphibians during their stream surveys which is noted and discussed in Appendix A of the EIS. Specifically, the amphibian species observed as described in Appendix A were all introduced species. Wrinkled frogs were observed on Hanawā Stream as stated in the "Biotic Surveys" section of Appendix A.

Comment 69: *In section 6.1.1 of Appendix C the consultants conclude that under the proposed action (30-year lease) "Vegetation would remain substantially the same" in the state Lease Area. Given that Citizens have watched invasive species such as melastomes, Job's tears, gingers, African Tulip and other pests spread substantially through the Lease Area over the past 30 years of access hikes, while the density and variety of native species diminish, the EIS needs to change this conclusion, acknowledge this impact, and provide adequate mitigation. The EIS needs to address what types of mitigation would be needed to make sure that a 30-year lease would not result in the disappearance of most native species in the 1,000 to 2,000 ft elevations in the Lease Area.*

Response 69: Please note that under the Proposed Action, no vegetation removal in the License Area is anticipated except occasionally during routine maintenance and repair activities of the EMI Aqueduct System. Moreover, instream flow throughout the License Area is expected to increase and diverted water will be significantly less than what was historically diverted from the License Area during sugarcane operations. Hence, vegetation is expected to remain substantially the same and no direct impacts to flora or fauna are expected as discussed in Section 4.4.1 and Section 4.4.2 of the Draft EIS.

We respectfully disagree with your comment that the EIS does not address mitigation measures to prevent the disappearance of native species in the 1,000 to 2,000 foot elevations. The elevation

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of the highest ditch that is part of the EMI Aqueduct System, the Koolau Ditch, is approximately 1,400 feet, not 2,000 feet and the EIS addresses mitigation measures that are applicable to the License Area. Appendix C and in Section 4.4.1 of the Draft EIS provide that endangered or threatened species and critical habitats exist in higher elevations of the License Area. As a mitigation measure, Section 4.4.1 of the Draft EIS states:

To avoid the introduction or transport of new invasive plant species into more pristine portions of the License Area during EMI Aqueduct System maintenance activities, all equipment and vehicles arriving from outside the License Area should be washed and inspected prior to any maintenance activities on cliff sides, near waterfalls, and in other native species-dominated areas in the License Area. Such washing and inspecting should be done at a designated location.

However, please note that the Section 4.4.1 of the Final EIS has been updated to include related mitigation measures based on comments received on the Draft EIS, as shown on pages 4-121 to 4-124.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Comment 70: *The EIS should have far more detailed information, and provide evidence before declaring that a 30-year extension of the current management style will result in "no impacts."*

Response 70: As discussed in Response #69 above, no vegetation removal is anticipated except occasionally during routine maintenance and repair activities of the EMI Aqueduct System. Moreover, regarding "management style," stream flow throughout the License Area is expected

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to increase and diversions will be significantly less than what was historically diverted from the License Area during sugarcane operations. Hence, vegetation is expected to remain substantially the same and no direct impacts to flora or fauna are expected as discussed in Section 4.4.1 and Section 4.4.2 of the Draft EIS.

Comment 71: *The East Maui Watershed Partnership includes the Lease area lands on their maps, but only actively manages of East Maui lands above 3,000' elevation, which is above the Lease Area. The EIS needs to make this fact clear.*

Response 71: The lands under the jurisdiction of the East Maui Watershed Partnership span over 100,000 acres which includes the entire License Area. The License Area is actively managed by the multiple agencies and organizations, including EMWP, Maui Invasive Species Committee (MISC), DLNR, etc., in partnership with EMI.

Regarding your comment that EMI does not actively manage lands below 3,000 feet is not true. EMI continues to work with MISC by reporting sighting of invasive weeds and coordinating access in these areas, which are well below the 3,000' level. EMI personnel also monitor the License Area for signs of feral ungulates.

Comment 72: *The public waters diverted by the EMI systems are the product of two factors: a) natural rainfall, and b) the watershed lands that receive the rainfall and discharge it into springs and streams. The quantity and quality of future stream flows will depend upon the health of the surrounding watershed lands. The EIS needs to examine the impact of each Alternative on these flows.*

Response 72: We acknowledge your comments regarding the source of the public waters. Please note that the HSHEP model in Appendix A estimates streamflow at all diversion locations based on watershed and rainfall characteristics. Regarding your comment that the quantity and quality of future stream flows depend upon the health of the surrounding watershed lands, please note as discussed in Response #69 above, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans.

Regarding your comment that the EIS needs to examine the impact of each alternative on these flows, please note that the Draft EIS does analyze each reasonable alternative on stream flow in Section 3.4.3 and Section 4.2.1 of the Draft EIS. The combination of the lower and upper bounds used for the HSHEP model in Appendix A, provide the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as by definition the changes must fall somewhere between 100% diversion and 0% diversion.

Two scenarios presented in Appendix A of the Draft EIS, the Proposed Action compliant with the CWRM D&O (Trutta Environmental Solutions' 2018 IIFS scenario) and No Action

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Alternative (30% remaining flow diversion) are examples of how different flow restoration scenarios result in different amounts of habitat restored. The HSHEP model is used to quantify these differences based on flow restoration changes at specific diversions.

As discussed in Section 3.4.3 of the Draft EIS, the HSHEP model requires specific diversion conditions at each diversion. Applying the model to the Reduced Water Volume alternative would require information regarding where stream flows are proposed to be increased over the Proposed Action and the amounts. Given such information, the HSHEP model is able to readily calculate the number of remaining Habitat Units (HU) in any given scenario. The appendices contained within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report (Appendix A of the EIS) provides the necessary data to form a scenario that the HSHEP model can use to analyze and quantify the changes that occur. Hence, the HSHEP model and the appendices within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report provides data that can assist decision makers understand how impacts could change across different diversions scenarios.

Comment 73: *In section 6. of Appendix C, the consultants conclude that the proposed action will have no Impacts- because “no habitat removal or loss is proposed...” The EIS ignores the well documented fact that dewatered streams over time lead to the decimation of native ecosystems and flora and fauna. The EIS proposes no mitigations to improve watershed health other than some mechanisms to prevent introduction of more invasive species on equipment or supplies.*

Response 73: The applicable language from Section 6 of the Terrestrial Flora and Fauna Technical Report (Appendix C) states, "*Since there is no habitat removal or loss proposed, impacts are not quantified but are described in qualitative terms.*" Regarding your comment that dewatered streams over time lead to the decimation of native ecosystems, please see Response #15 above regarding cumulative impacts.

Appendix C of the Draft EIS specifically addresses the flora and fauna considerations of the Proposed Action and alternatives. To minimize the impacts to flora and fauna in the License Area, Section 7 of Appendix C identifies several avoidance and minimization measures, including measures to avoid the introduction of additional invasive species to the License Area, which is harmful to the watershed and to native flora which are also reflected in Section 4.4 of the EIS. Moreover, regarding your comment that the EIS does not propose any mitigation measures for watershed health, Section 2.1 of the Draft EIS acknowledges the requirement for watershed management under HRS § 171-58(e).

It is recognized that Hawai‘i’s fresh water originates from the forest, which capture and absorb hundreds of inches of rain each year, allowing for slow infiltration and replenishment of our

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aquifers and streams. Based upon this understanding, the legislature added sub-section (e) to HRS § 171-58, requiring the incorporation of a watershed management plan into all water lease agreements to help protect freshwater resources (surface and groundwater). In addition to sustaining ground and surface water supplies, healthy forests reduce erosion by holding soil in place, improve water quality, and provide habitat for unique and endangered plants and animals. Focusing on watershed management plans that target mauka protection actions (fencing, removal of hooved animals from important watershed forests, invasive weed control, etc.) that benefit native forests is essential if water lessees are going to have a reliable long-term supply of fresh water.

Comment 74: *The Appendix C survey provides no guidance for any restoration activities in the Lease Area, which is widely done in other EIS documents that are involved with projects, like this one, that will, by law, trigger future management plans.*

Response 74: As discussed in Response #12 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B’s former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS. The impacts of the alternatives to the Proposed Action are discussed in Chapter 3 of the EIS.

Moreover, regarding your comment about restoration activities, as discussed in Response #69 above, the lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans and will be required to jointly develop a watershed management plan with the DLNR. One of the goals of a watershed management plan is to identify priority outcomes essential to maintain and *restore* biological integrity to the maximum extent practicable which include but is not limited to:

1. Removal and control of non-native hooved animals (pigs, goats, deer, sheep, cattle) from important watershed forests.
2. Removal or containment of damaging invasive plants and animals that threaten important watershed forests.
3. Monitoring and controlling other forest threats including fires, predators, and plant diseases.
4. Restoring and out-planting native species in important watershed areas and buffer zones.

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5. Communication, outreach and community education to build capacity for citizen-based watershed protection.

Additionally, Appendix C provides detailed avoidance and mitigation measures to minimize impacts of the Proposed Action to flora and fauna which are summarized in Sections 4.4.1 and 4.4.2 of the Draft EIS. Moreover, the discussion of these avoidance and mitigation measures has been expanded on as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131.

Comment 75: *Appendix C and the DEIS make the erroneous assumption that 140 years of EMI use and management has had no impact on the substantial loss of native flora and fauna on public lands in the Lease Area. This assumption needs to be corrected to reflect known studies that prove otherwise.*

Response 75: We respectfully disagree with your comment that the Draft EIS and Appendix C assume that there has been no impacts to native flora and fauna in the License Area. As discussed above in in Response #15 above, we acknowledge that an EIS must consider cumulative impacts, which means "the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions." HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision-making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease. However, please note that streams in East Maui have been diverted for over a century and it is not scientifically possible to fully document impacts that first took place more than a century ago as pre-diversion data does not exist.

Section 4.4 of the EIS specifically addresses the impacts of the Proposed Action to flora and fauna resources within the License Area, including a discussion of the cumulative impacts. Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS that was prepared by SWCA included a survey of approximately 33,000 acres of land in East Maui referred to in the SWCA report as the License Area and approximately 30,000 acres of agricultural land in Central Maui that it referred to as the Service Area. These areas were collectively referred to as the Study Area throughout the SWCA report. This report is summarized in Section 4.4 of the EIS, which has been supplemented with a discussion on potential impacts on a watershed by watershed basis, using data produced by the HSHEP model and HIGAP data provided by the State, along with surveys conducted within the region as shown on pages 4-121 to 4-124.

In summary, the Proposed Action is not anticipated to have any significant impacts on the terrestrial flora and faunal resources. Section 6.3 of Appendix C in the Final EIS states that, "The

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increased water flows in the streams would likely have very little impact on terrestrial flora and fauna.” Hence, this statement refers to all existing flora and fauna within the License Area and is not limited to only native species. As discussed in Section 5.1.2.1 of Appendix C in the Draft EIS, the majority (60%) of the License Area is already composed of “Open / Closed ‘Ōhi‘a Forest,” which mainly constitutes the higher elevation areas where water is not diverted as shown by Figure A-2 of Appendix C. Moreover, the immediate area surrounding the EMI Aqueduct System tends to be composed of “alien forest” which consist of non-native species.

Hence, as explained above, it is anticipated under the “Reduced Water Volume” alternative, an increase in water flow would likely have little impact on native land-based flora and fauna in the areas where more stream flow would be restored as they are removed from the direct stream environment, if there were no Water Lease (lower elevations that are made up of “alien forest”). However, as noted in Section 6.3 of Appendix C in the Final EIS, the impacts would vary on a stream-by-stream basis.

Comment 76: *Section 6.2 of Appendix C concludes that the No Action alternative (no lease awarded) would mean that it would likely not be viable for EMI to maintain the ditch system. The EIS needs to include supporting information for this conclusion. It also needs to further explore the beneficial impacts of the No Action alternative on native stream life, offshore fisheries, cultural use, recreational use, and aesthetic use. The EIS needs to discuss and analyze the possibility of others such as County or State maintaining portions of ditch system for a much-reduced level of diversion. The idea is simple dismissed as “too speculative” at this time, although the Maui Board of Water Supply has issued a report after investigating the topic.*

Response 76: Appendix C did not make the conclusion you stated. Appendix C merely recognized that under a No Water Lease alternative, if the scenario was sufficient for EMI to continue operation and maintenance of the EMI Aqueduct System, then the activities would have impacts comparable to the Proposed Action. Appendix C also recognized that if it were determined that operation of the EMI Aqueduct System was not viable because no Water Lease was issued, and EMI abandoned the system, human noise and activity along the EMI Aqueduct System would be reduced from current levels to none, and the system itself could go into disrepair and become overgrown, which could reduce or reverse current levels of habitat fragmentation. Incidentally, similar analyses were provided in the LRFI (Appendix E), which noted that if the No Action alternative includes the continued maintenance and repair of the existing EMI Aqueduct System regardless of the issuance of the subject Water Lease, then the No Action alternative will not include partial or total destruction or alteration of historic properties, detrimental alteration of the surrounding environment, detrimental visual, spatial, noise or atmospheric impingement, increasing access with chance of resulting damage, nor neglect resulting in deterioration or destruction. But if the No Action alternative does not include continued maintenance and repair of the existing EMI Aqueduct System, then the No Action alternative has the potential to pose an impact to historic properties. Moreover, Chapter 3 of the

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EIS includes a variation of the Mahi Pono farm plan that would be pursued in the event no Water Lease was issued. We cannot find any definitive statement in the EIS saying that EMI would stop operating and maintaining the EMI Aqueduct System if the Water Lease is not issued.

Nevertheless, it should be noted that the EMI Aqueduct System is designed to operate with large amounts of diversion water flowing through it. Less water flowing through the EMI Aqueduct System equates to more maintenance and repair activities. Moreover, Mahi Pono may not generate enough revenue to maintain a large diversified agricultural operation and maintain and operate the EMI Aqueduct System with the limited amount of water as contemplated under the No Action scenario.

Regarding your comment that the EIS needs to further explore the beneficial impacts of the No Action alternative on native stream life, offshore fisheries, cultural use, recreational use, and aesthetic use, please note that this is discussed in Section 3.4 of the EIS. Moreover, a table of the comparative benefits and impacts has been added to summarize all the benefits and impacts from the Proposed Action and reasonable alternatives as shown on pages 3-49 to 3-80.

Regarding your comment that the EIS needs to provide a discussion or analysis of others maintaining or operating the EMI Aqueduct System, this is discussed in Section 3.1.2 of the Draft EIS, as follows:

During public scoping for the DEIS in 2016 and 2017, it was suggested that the EMI Aqueduct System should be brought under new ownership, without the further involvement of A&B and EMI, and potentially under public ownership. Ownership of the EMI Aqueduct System changed in January 2019 to include Mahi Pono, which intends to pursue diversified agriculture in Central Maui. Consideration of another change in ownership is too speculative at this point to warrant analysis. A change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action. As discussed elsewhere in this DEIS, EMI has been operating the EMI Aqueduct System since the start of construction in the 1870s. Few have the knowledge to operate and maintain this unique and complex system, consisting of approximately 388 separate intakes, 24 miles of ditches, and 50 miles of tunnels, as well as numerous small dams, intakes, pipes, 13 inverted siphons and flumes. Furthermore, the EMI Aqueduct System is not for sale, and forced acquisition of the system is projected to be prohibitively expensive, resulting in substantial costs to the public. For these reasons, this alternative is viewed as a highly speculative and unreasonable alternative, and one that would not meet the objectives of the Proposed Action. Therefore, it was dismissed from further review.

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Hence, it was deemed to be speculative as the EMI Aqueduct System is not for sale, there had not been a cost appraisal of the system, and few have the skills or knowledge to operate the extensive and complex EMI Aqueduct System.

We are aware of the County Board of Water Supply (BWS) Temporary Investigative Group (TIG) Report, which was published after the Draft EIS, on the potential acquisition of the EMI Aqueduct System by the County, speaks directly to the “ownership change” alternative referenced in your comment. To provide further context, on July 19, 2019, the Maui County BWS formed the TIG to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System.

Based upon information available in relation to findings and conclusions of the TIG report, it is our assessment that the County’s potential acquisition of the EMI Aqueduct System remains speculative. Furthermore, much of the institutional knowledge needed to properly operate the EMI Aqueduct System would be lost under any change in ownership scenario. This could reduce the efficacy of the system, the new owner may not have the expertise needed to properly maintain it, and possibly lead to additional and unforeseen environmental impacts. Moreover, a change in ownership would presumably directly contradict the objectives of the Proposed Action as outlined within the EIS. It is noted that the TIG report’s proposal for water rates for the Central Maui agricultural fields is nearly ten times that of what is being charged to the Agricultural Park and Upcountry agricultural users, thus rendering the economic viability of agriculture on the Central Maui fields unfeasible.

For purposes of assessment in this EIS, it is assumed that an alternative owner of the EMI Aqueduct System would be required to meet goals of the Proposed Action as described in this EIS, including meeting the Proposed Action’s stated objective to support an economically feasible, sustainable diversified agricultural operation across the Central Maui agricultural fields.

For the reasons discussed above, the County’s acquisition of the EMI Aqueduct System, and the County’s pursuit of a water lease from the BLNR are viewed as speculative and an unreasonable alternatives. However, the existence and findings of the TIG Report has been acknowledged in Section 3.1.2 of the Final EIS, as shown on pages 3-19 to 3-20. A copy of the TIG Report has been included in the Final EIS as Appendix P.

Comment 77: *EIS needs to discuss the implications of the fact that EMI controls the 4 levels of ditch system west of the lease area, which are connected to the East Maui ditch system, but not affected by the lease decision.*

Response 77: It is correct that there are four levels of EMI Aqueduct System located west of the License Area. Figure 2-2 (EMI Aqueduct System) shows the ditches that are located on private

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lands west of the License Area. It is noted in Section 2.1.2 of the Draft EIS that the EMI Aqueduct System is estimated to divert an additional 4.37 mgd in this area. Access to this water is also assumed under the No Lease alternative, i.e., the EIS recognizes that water diversions from this area will not be affected by decisions on the proposed Water Lease.

Comment 78: *Section 6.3 concludes that the Reduced Water alternative (alternative 2) would result in more ditch maintenance required and “more human activity in area and greater chance of potential for negative impacts.” This section also concludes (with no proof offered) that “increased water flows in the stream would likely have very little impact on native land-based flora and fauna” and that “Impacts on aquatic fauna (damselflies, etc.) would vary by stream.” The EIS offers no proof that either of these conclusions is true, yet they are offered as a rationale to decision makers to support the Alternative 1 lease.*

Response 78: To clarify, Section 6.3 of Appendix C in the Final EIS states that, “*The increased water flows in the streams would likely have very little impact on terrestrial flora and fauna.*” Hence, this statement refers to all existing flora and fauna within the License Area and is not limited to native species. As discussed in Section 5.1.2.1 of Appendix C in the Draft EIS, the majority (60%) of the License Area is already composed of “Open / Closed ‘Ōhi‘a Forest,” which mainly constitutes the higher elevation areas where water is not diverted as shown by Figure A-2. Moreover, the area surrounding the EMI Aqueduct System tends to be composed of “alien forest” which consist of non-native species. Hence, it is anticipated under the “Reduced Water Volume” alternative, which would involve more human activity, that an increase in water flow would likely have little impact on native land-based flora and fauna in the areas where more stream flow would be restored. However, as noted in Section 6.3 of Appendix C in the Final EIS, the impacts would vary on a stream-by-stream basis. Please note that Appendix C has been updated to discuss how the Proposed Action would potentially impact the flora and fauna within the License Area on a watershed-by-watershed basis, using data produced by the HSHEP model and HIGAP data provided by the State, along with surveys conducted within the region. The updates are reflected on Section 4.4 of the Final EIS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Regarding aquatic fauna, and specifically damselflies as raised in your comment, under the Reduced Water Volume alternative, the HSHEP model (Appendix A) conducted an analysis of impacts to damselflies, which concluded that return to natural flow conditions should improve damselfly habitat. However, the restoration of baseflow will likely also improve habitat conditions for a number of introduced predator and competitor species of the native damselflies and thus may not in itself increase damselfly populations. Hence, under the Reduced Water Volume alternative, the more water returned to natural flow conditions, the more of an increase in damselfly habitat. This has been added to Section 3.4.3 of the Final EIS as shown on page 3.27.

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Comment 79: *Appendix C refers to a future Management Plan for the Lease area that will be done by the State of Hawaii for the lease lands as part of any future lease agreement. The lease requirements found in HRS 171-58 specify that A&B/Mahi Pono need to jointly prepare a management plan with the State:*

“(e) any new lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan.”

Appendix C - “Assessment of Terrestrial Flora and Fauna” makes absolutely no reference to any need for restoration or management of the public lands in its analyses or recommendations. The DEIS clearly quantify the impacts of a long term lease, and must evaluate and mitigate those impacts.

Response 79: As discussed in Response #12, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for uses described in the EIS. The environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS.

Moreover, as discussed in Response #69 above, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans.

However, Appendix C does provide detailed avoidance and mitigation measures for actions within the East Maui License Area, which are summarized in Sections 4.4.1 and 4.4.2 of the Draft EIS. These avoidance and mitigation measures have been expanded on as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131.

Comment 80: *Section 6.5 discusses Alternative ownership/ Management of the ditch system and lease area- and concludes that such management “would have effects identical to those described in the “proposed Action” on Terrestrial Flora-Fauna. The DEIS needs to include analysis of increased investment in watershed management that could come with a new “ownership” model.*

Response 80: It is unknown whether any increase in investment in watershed management would come as the result of new ownership of the EMI Aqueduct System (which is not for sale in any event). However, as discussed in Response #29 above, alternative ownership of the EMI Aqueduct System is purely speculative and furthermore, because such a scenario is speculative, it is unclear whether or how it could achieve the objectives of the Proposed Action. The

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alternatives analysis within the EIS is provided consistent with the requirements under HAR § 11-200-17(f).

Comment 81: *Section 6.6 dismisses the Greater Public Access alternative (smaller lease area) and concludes that greater access would impact flora and introduce more alien species and impact habitat of native birds. The DEIS needs to analyze the beneficial impacts of increased access that results in greater restoration/management activities in the watershed lands, as has been the case in various areas on Maui that manage public access.*

Response 81: Section 6.6 of the SWCA report (Appendix C) did not dismiss any particular alternative. The purpose of the technical reports is, in part, to identify potential impacts and where appropriate mitigation measures. However, any alternative or variation of an alternative that would increase public access to the License Area would have the potential to increase impacts to flora and fauna species that are present in the License Area. Increased access into the License Area would presumably allow for hiking, hunting, gathering, and other recreational and/or cultural activities to take place. An increase in these activities would result in increased vegetation trampling, which, depending on degree of access and use of the area, may have a significant impact on existing flora. In addition, the potential for weed, rapid 'ōhi'a death, and little fire ant introduction and invasion would increase. Weeds, by definition, can outcompete most flora for space and nutrient resources. Weed invasions, if they were to occur, would decrease the quality and quantity of habitat available for native plant species, which in turn may decrease the quality of critical habitat for the Maui parrotbill and crested honeycreeper. The presence of vehicles and humans for various activities in the License Area could disrupt the normal behavior of wildlife and temporarily displace individuals from roadside habitat. Human noise and activity would increase due to an increase in access, which would have a negative impact on wildlife.

Increasing the area open to public use would increase the potential for these impacts to flora and fauna to take place and potentially increase the intensity of the impacts throughout the License Area. Should the License Area be modified for greater public access, the intensity of these impacts would be greater if the public is allowed in the eastern portion of the License Area. The analysis in Appendix C demonstrates that native and unique flora and fauna species are more likely to occur in the eastern portion of the License Area. Allowing public access to the western portion of the License Area may have a lesser negative impact on biological resources. Hence, under this alternative, it is recommended that the Water Lease lessee work with the respective State agency to design an appropriate boundary that protects the integrity and safety the EMI Aqueduct System and staff, as well as minimize public access to the eastern portions of the License Area. This has been added to Section 6.6 of Appendix C and summarized in Section 3.2.2.2 of the Final EIS as shown on pages 3-21 to 3-24.

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Section 1.3.1 and 3.2.2.2 of the Final EIS has been updated to acknowledge that under the water revocable permits (RPs) issued for 2020 and approved for 2021, the Hanawā Natural Area Reserve (NAR) was removed the License Area under the reevocable permits as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place.

Comment 82: *Section 7 offers Avoidance & Minimization measures such as:*

- *Biological monitor during maintenance in waterfall /cliffside areas*
- *Wash and inspect equipment before maintenance*
- *inspect any materials used for maintenance*
- *monitor ESA damselflies- work with USFWS*
- *training for onsite staff to recognize endangered species*
- *sensitivity to i'iwi nests during tree trimming*
- *use of barbless strand for top wire of fences to avoid bat injuries*

While these would be a step forward from current conditions, there is no accountability for these practices actually being employed. Take the example of fencing mentioned. Thousands of acres of Mahi Pono land have recently been fenced, some of which has stands of trees that could serve as potential endangered bat habitat. All of the fencing observed has barbed wire on its top strand, which is detrimental to bat survival. Will all this be changed only if the lease is granted?

Response 82: You are correct that Section 7 of Appendix C (Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease) provides the above avoidance and minimization measures. As discussed in Response #69 above, these avoidance and minimization measures have been expanded on as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131.

In response to your concern about accountability, it is anticipated that any Water Lease issued by BLNR will include conditions imposed upon the lessee. In this case, it is anticipated that mitigation measures presented in the EIS will inform the BLNR as to what conditions it may wish to impose upon the Water Lease lessee. Should the Water Lease be awarded such that Mahi Pono can proceed with its desired farm plan, Mahi Pono would comply with any applicable Water Lease terms, including removal of barbed wire, if required. Mahi Pono installed the barbed wire strand as a deterrent to deer, which, if unchecked, could destroy crops. Even if no Water Lease is granted, Mahi Pono has indicated that it will work with the State Division of Fish

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and Wildlife (DOFAW) and the Department of Agriculture to determine whether the existing fences are a danger to the Hawaiian hoary bats and if so, whether an effective alternative can be implemented to deter deer from entering on to the farm land.

Comment 83: *Historic Resources Assessment (Appendix E). DEIS consultants have misrepresented East Maui Lease conditions to SHPD, after SHPD initially requested an AIS be done. The Action was described as “involving no ground altering activities” in order to be exempted for performing any ground based Archaeological Inventory Survey.*

Response 83: We respectfully disagree with your comment that the Draft EIS consultants misrepresented the Proposed Action to the Department of Land and Natural Resource, State Historic Preservation Division (SHPD). Correspondence from SHPD dated January 27, 2017 and October 6, 2017 are appended to Draft EIS Appendix E (Archaeological Literature Review and Field Inspection), confirming SHPD's position on this issue. Issuance of the Water Lease is not anticipated to affect any historic property, aviation artifacts, or burial site.

As discussed in Draft EIS Section 4.5 (Historic and Archaeological Resources) the Proposed Action does not involve any new construction or significant ground disturbance within undisturbed areas within the License Area. The Proposed Action continues the use of the EMI Aqueduct System for the transport of surface water, and allows the lessee or its permittees, to maintain and repair existing access roads and trails long-used as part of the EMI Aqueduct System. As discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System. Moreover, this was explained to SHPD as discussed in the Archaeological Literature Review and Field Inspection provided as Appendix E of the EIS (“Additional information regarding the proposed Water Lease was provided to the SHPD including the understanding that the proposed Water Lease will not involve any significant ground disturbance within undisturbed areas.”)

Comment 84: *The 3-day field visit of 21 intakes on the EMI system cannot be held up as any proof that historic sites are not present either on state or EMI lands. The Fig 47 map in Appendix E indicates that 8 of those intakes were located on EMI land. Mahi Pono has informed the public that if they secure 30-year leases they plan to invest \$2 mil in ditch repairs. Other repairs and maintenance are needed on roads and ditch trails. A number of intakes on fully restored streams still need to have construction work undertaken. All of this ground altering construction activity has the potential to affect cultural and/or historic sites. These are all secondary impacts of the 30 Year Lease being granted. SHPD should be fully informed of the*

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secondary impacts and proposed activities in an area with no previous Archaeological review, and a full AIS should be completed.

Response 84: Please note that the EIS does not state that historic sites are not present within the License Area. In fact, the EIS acknowledges that historic sites may be present in the License Area, and a Historical Structure Assessment was prepared for the EMI Aqueduct System itself. See Appendix D to the EIS. Moreover, as explained in Response #83, SHPD was fully informed of the actions related to the proposed Water Lease and SHPD determined that no Archaeological Inventory Survey (AIS) was warranted.

The archaeological literature review and field inspection (LRFI) prepared by CSH included an analysis of the natural and built environment of the License Area, a comprehensive review of traditional and historic background information of the region, a review of previous archaeological studies and findings in the region, and a field inspection of the License Area focused on inspecting the areas nearest to the EMI Aqueduct System infrastructure and access roads. Based on the research and analysis conducted for the LRFI, neither the Water Lease, nor the alternatives, is expected to have impacts archaeological historic properties within the License Area because none of these actions include significant related ground disturbance. If, through future implementation of the Proposed Action or the alternatives, ground disturbance subject to County, State, and/or Federal permits is required, then CSH recommends consultation with the SHPD to determine historic preservation requirements. The LRFI also provides cultural resource management recommendations based on the extensive research and analysis conducted during the study. For example, CSH recommends that any persons who are required to enter the License Area as part of the Proposed Action or alternatives be made aware of the potential for discovery of undocumented surface historic properties such as walls, trails, terraces, mounds, and/or caves. These structures should be avoided, protected, and reported to the SHPD. The SHPD will determine if additional mitigation is required. This recommendation is in line with recommendations that were made for the Waikamoi Preserve during a cultural-historical study of East Maui (Maly and Maly 2006).

Please note that the Applicant makes no representation regarding Mahi Pono investments in repairs to the EMI Aqueduct System, and your comment does not identify where in the EIS such information was provided, therefore no further response can be given. As discussed in Section 4.7.3 of the Draft EIS, future operational costs for the EMI Aqueduct System are anticipated to be \$1.8 million annually, similar to average costs experienced during the recent sugar operations period (2008-2013) with the only variation being the amount of the Water Lease payments owed to the State.

As discussed in Section 2.1.2 of the Final EIS, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and

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flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment.

Comment 85: *EMI maintenance activities associated with the leases will take place both on State and EMI land, and both should be included in a full AIS as part of the EIS process.*

Response 85: You are correct that EMI maintenance activities will potentially take place on both State and EMI land. However, regarding your comment that both should be include in a full AIS as part of the EIS process, as discussed in Response #83 above and in Section 4.5 of the Draft EIS, the Proposed Action does not involve any new construction or significant ground disturbance in East Maui. The Proposed Action continues the use of the EMI Aqueduct System for the transport of surface water, and allows the lessee or its permittees, to maintain and repair existing access roads and trails long-used as part of the EMI Aqueduct System. Moreover, as mentioned in Response #83 above, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment. Moreover, as more fully described in Response #89 below, there is no requirement under HRS Chapter 343 that an EIS include an AIS. Moreover, as discussed in Response #83 above, SHPD clearly determined that no AIS should be prepared for this Water Lease.

Comment 86: *The EIS needs to include ground surveys of the roads and trails found in the lease area, which are also historic properties. Many stone paved trails are found in the East Maui Lease area, but these are not mapped or referred to in Appendix E.*

Response 86: As noted above in Response #54, Section 4.5 of the Final EIS, as well as Appendix E (Archaeological Literature Review and Field Inspection) have been revised to include the current inventory of roads and trails in the License Area as shown on pages 4-147 to 4-149. CSH completed a geographic analysis of trails and roads that appear on maps of the License Area. This analysis is limited to trails and roads that were depicted on maps between 1869 and 1992 and available to the public domain. This analysis is also limited to only the roads or trails that extend within the License Area. Hence, if the stone paved trails that you refer to in Comment #86 above were not depicted on the available map documentation, they are not known to CSH or WOC. Moreover, in your interview with CSH following publication of the Draft EIS, you did not specify any locations of these alleged unmapped trails.

Comment 87: *The Proposed action will involve, as secondary impacts, extensive mechanical clearing of these same roads, as well as EMI ditches and intake areas. It will also include the agreed upon modification of intakes to restored streams in the Lease Area ordered by CWRM.*

Response 87: Please note that the Proposed Action does not entail "extensive mechanical clearing" of roads or other modifications as you suggest. The Proposed Action involves the

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continued use of the EMI Aqueduct System, including the roads and trails that have been used as part of the EMI Aqueduct System, which has been in operation for over one hundred years. As discussed in Response #83 above, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment. Any alteration or other work to the actual stream diversions to comply with the CWRM D&O would occur regardless of the issuance or non-issuance of the Water Lease.

Regarding your comment about modification of intakes to restored streams in the License Area, that work is being done to comply with the CWRM D&O. That work is required irrespective of the issuance of the proposed Water Lease and is not within the scope of the Proposed Action. However we note that EMI is working with the CWRM to make the necessary modifications to meet the IIFS of the 2018 CWRM D&O.

Comment 88: *The EIS cannot meet the HAR 11-200-16 content requirements “ to discuss all relevant and feasible consequences of the action” if it ignores the fact that these secondary impacts will occur as part of the granting of a 30-year lease to access state lands and maintain EMI ditch system and trails.*

Response 88: Secondary impacts are analyzed within Section 4.17 of the EIS. We acknowledge that HAR § 11-200-16 requires the Draft EIS to “fully declare the environmental implications of the proposed action and [to] discuss all relevant and feasible consequences of the action.” The EMI Aqueduct System has been in place for well over one hundred years and the Proposed Action does not entail any expansion of the EMI Aqueduct System or the construction of any new roads to access the EMI Aqueduct System. The Draft EIS looked at impacts not only within the geographical area of the Water Lease (i.e. within East Maui), but also considered impacts in Central Maui and in Upcountry Maui in compliance with HAR § 11-200-16 and other relevant provisions of HAR Title 11, Chapter 200. Consistent with the requirement to assess secondary impacts, the EIS describes the anticipated water use and related activities at full implementation of the Mahi Pono farm plan, which was presented as Mahi Pono's 2030 vision. As explained in Section 2.1.5., it is estimated that 10 years will be required for Mahi Pono and lessees to remove volunteer sugarcane and weeds from the approximate 30,000 acres, amend soils, install field improvements, build warehouses and other structures, and plant crops.

Comment 89: *Whether these actions occur on state lease land or on EMI lands, our State Historic preservation laws would require an Archaeological field survey, to determine the presence or absence of historic properties, if the agency was aware of the true nature of the implications of the 30-year lease. None of these sites have been recorded: Patsy’s Minks family (Takemoto’s) lived in the Waihinepe’e area and the same area included the legendary pohaku that gave the valley its name when it sheltered an escaping Ali’i wahine. This pohaku is near an EMI access road. The historic review also ignores historic sites located in Mahi Pono fields, like*

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the Papanene Heiau in the Spreckelsville area and the cultural practice associated with the site. A&B operates a construction dumping ground adjacent to the heiau remains. No archaeological work has been done on the site. These are just a few examples of why the EIS is not complete, and cannot be found to have discussed and mitigated all impacts, without the addition of an AIS.

Response 89: It is unclear what is meant by your reference to an “Archaeological field survey.” We assume you meant an Archaeological Inventory Survey (AIS). However, there is no requirement under HRS Chapter 343 that an EIS include an AIS. Kaleikini v. Yoshioka, 128 Hawai‘i 53, 283 P.3d 60 (2012) (holding that, with respect to the EIS done for the Honolulu rail project, “although the final EIS did not include an AIS, it was nonetheless sufficient to enable the decision-maker to consider fully the environmental factors involved” and upholding the acceptance of the EIS.). The Draft EIS, as required under HRS Chapter 343, includes extensive information about archaeological, historic, and cultural resources, including the following three technical studies: Historical Structure Assessment, Archaeological Literature Review and Field Inspection, and Cultural Impact Assessment. Moreover, as discussed above, the Proposed Action, including maintenance and repair of the EMI Aqueduct System, does not involve ground disturbing activity except in the Central Maui agricultural fields which have been continuously disturbed through historical agricultural uses for over 100 years.

Moreover, SHPD has been well informed about this EIS and the proposed Water Lease. A Chapter 6E-7 and 6E-42 historic preservation review letter dated 25 January 2017 (Log No. 2017.00026; Doc. No. 1701GC08) sent from the SHPD to the DLNR Land Division requested that, pursuant to HAR §13-284-5(b)(5)(A and C), an AIS and an architectural inventory survey, be prepared prior to issuance of the Water Lease, and that the AIS be preceded by archaeological inventory survey plan. Thereafter, additional information regarding the Water Lease was provided to the SHPD including the understanding that the proposed Water Lease will not involve any significant ground disturbance and that the potential impact of flooding from abandoning certain diversion will not be greater than periodic naturally occurring events. A subsequent Chapter 6E-8 historic preservation review letter (Log No. 2017.00026; Doc. No. 1706MBF11) sent from the SHPD to the DLNR Land Division updated the previous correspondence to no longer request the completion of an AIS plan or AIS for the License Area in conjunction with the proposed Water Lease because the Water Lease does not entail ground disturbing activities (other than what has taken place as part of routine maintenance).

Regarding your comment about the legendary pōhaku, CSH archaeologist Angela Yates, B.S. completed a pedestrian inspection of the Wahinepe‘e area on February 16, 2020 in an effort to locate the legendary pōhaku in Wahinepe‘e in response to this particular comment. However, this legendary pōhaku could not be located. The field inspection began with a pedestrian/vehicular inspection on the grounds of the Garden of Eden Arboretum, followed by a pedestrian inspection of areas along Wahinepe‘e Forest Reserve Road. These are the areas that correspond with former house lots and trails that may have been associated with the pohaku.

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During the field inspection, the property owner and other employees of the Garden of Eden Arboretum discussed the property and had no knowledge of a legendary pohaku in the area. While the legendary pohaku at Wahinepe'e was not located during the field inspection, the inspection did identify potential historic properties located outside (makai) of the License Area. These potential historic properties are located approximately 400 meters or more downslope from the nearest irrigation ditch and outside of any active stream channel. These potential historic properties will not be impacted by the Proposed Action.

Regarding your comment about the Papanene Heiau, CSH determined that the most likely location for Papanene Heiau is in Spreckelsville, approximately 14.7 km (9.13 miles) west of the most western extent of the current project area. However, as noted within Section 4.5 of the Final EIS, the Papanene Heiau has been determined to be destroyed.

The archaeological inventory survey for the Paia Bypass was conducted to identify historic properties. The cultural impact assessment for the Paia Bypass was prepared to identify cultural practices but has not been finalized. The draft CIA for the Paia Bypass project identified "fishing practices, hula practices, Japanese Buddhist O-bon season traditions, as well as a variety of religious practices" as on-going cultural practices within the Paia Bypass project area. The Paia Bypass project area does not overlap with the License Area.

The archaeological inventory for the Paia Bypass also did not identify Papanene Heiau. The study noted the same information as provided in the Walker (1931) survey, that the heiau was noted.

Section 4.5 of the Final EIS has been revised to include the above discussion, as shown on pages 4-154 to 4-155.

Comment 90: *Due to lack of management of heavily diverted dry stream beds over the years, storm surges have uprooted large trees along stream banks and carried them downstream, where they put historic kalo lo'i, house platforms and other structures at risk. None of these historic properties have been surveyed or recorded in the lease area, except by volunteers. After 140 years of diversions, it is time for EMI to undertake a proper historical survey. The EIS needs to include this information, analyze potential impacts, and propose appropriate mitigation.*

Response 90: Regarding your comment about a perceived lack of management, EMI staff continually perform repair and maintenance activities the EMI Aqueduct System as necessary. As discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7 under the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment.

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Regarding your comment about the historic properties and structures being at risk due to storm surge and dry stream beds, EMI is not aware of any such concerns over at least the past 20 years. Moreover, Appendix E (the LRFI) has been updated to include discussions regarding climate change impacts to historic properties and structures as summarized in Section 4.3.1 (see pages 4-89 to 4-91 of the Final EIS).

Regarding your comment that it is time for EMI to undertake a proper historical survey, please see Reseponse #83 and Response #84 regarding SHPD's requirements with respect to historic review related to the Proposed Action and the scope of the LRFI. We also note that the LRFI has been supplemented with additional information provided in response to comments on the Draft EIS, as summarized on pages 4-135 to 4-139 of the Final EIS.

Comment 91: *Unintended destruction of Hawaiian historic sites also impacts native Hawaiian cultural practice, which the EIS should also discuss and mitigate by directly involving East Maui communities in historic site preservation activities. Aha Moku Council representatives also refer to historic sites in the state or EMI lands surrounding the EMI ditch system, and Aha Moku representatives for Hamakuapoko and Ko'olau moku should be part of the AIS fieldwork process*

Response 91: The scope of the Proposed Action does not involve the destruction of any historic sites. The CIA includes outreach to members of the Aha Moku Council as listed in Table 12 of the CIA (among other groups and organizations). Of the recognized members of the Aha Moku Council who participated in the CIA, Mr. Nakanelua provided a discussion of Pākanaloha Heiau. The location and description of Pākanaloha Heiau is addressed in the LRFI in Section 2.4 (Walker Site 84). The heiau is located outside of the License Area, on Ke'anae Peninsula.

No other recognized members of the Aha Moku Council provided information on specific historic properties during consultation for the CIA.

As discussed in Response #89 above, there is no requirement under HRS Chapter 343 that an EIS include an AIS. *Kaleikini v. Yoshioka*, 128 Hawai'i 53, 283 P.3d 60 (2012) (holding that, with respect to the EIS done for the Honolulu rail project, "although the final EIS did not include an AIS, it was nonetheless sufficient to enable the decision-maker to consider fully the environmental factors involved" and upholding the acceptance of the EIS.). The Draft EIS, as required under HRS Chapter 343, includes extensive information about archaeological, historic, and cultural resources, including the following three technical studies: Historical Structure Assessment, Archaeological Literature Review and Field Inspection, and Cultural Impact Assessment. Moreover, as discussed above, the Proposed Action, including maintenance and repair of the EMI Aqueduct System, does not involve any significant ground disturbing activity except in the Central Maui agricultural fields which have been continuously disturbed through historical agricultural uses for over 100 years.

Comment 92: *Cultural Impact Assessment (appendix F). The EIS does not fully acknowledge the impact that past and proposed reduced stream flows have had on the native stream life and*

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marine life that is so directly connect with the ability of Native Hawaiians to engage in traditional cultural practice of fishing and gathering in East Maui.

Response 92: The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued to EMI for the License Area in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55.

Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water. . . .*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all constitutionally protected traditional and customary rights.

We believe that the Draft EIS adequately discusses the impacts of the Proposed Action both in terms of the effects on habitat and on traditional and customary Native Hawaiian practices. Specifically, in terms of habitat, Appendix A and Section 4.2.1 of the Draft EIS presented the HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to determine an appropriate balance between instream and offstream water uses. Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Impacts to terrestrial flora and fauna, including threatened and endangered species, are analyzed in Section 4.4 and Appendix C of the EIS. As it relates to traditional and customary, please note that CSH provides a detailed and comprehensive report accounting the history of East Maui. This report is included in Appendix E and summarized in Section 4.5 of the EIS. The EIS includes an assessment of effects on the cultural practices through the CIA provided as Appendix F.

The information provided satisfies EIS content requirements. This information will also inform BLNR in the future, when it is deliberating on the issuance and terms of the Water Lease. Under the Public Trust Doctrine, BLNR will have to balance competing considerations before making a decision on the Water Lease. The balancing that BLNR is required to perform under the Public Trust Doctrine was described at length by the Hawai‘i Supreme Court in *In Re Water Use Permit Applications*, 94 Hawai‘i 97, 9 P. 3d 409 (2000) (“Waiahole I”) and summarized in Section 1.5 of the Final EIS as shown on pages 1-25 to 1-27.

With regard to the potential effects of the Proposed Action on traditional and customary practices, as discussed in the *Ka Pa‘akai* decision, we acknowledge that BLNR will be required to “to protect the reasonable exercise of customarily and traditionally exercised rights of

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Hawaiians to the extent feasible.” *Ka Pa‘akai*, 94 Hawai‘i at 35, 7 P. 3d at 1072. BLNR has previously so stated in its Findings of Fact, Conclusions of Law, and Decision and Order filed on March 23, 2007 in the contested case proceeding that is still pending regarding the Proposed Action (the 2007 D&O) as follows:

Public trust principles require that adequate provision be made for the protection of *traditional and customary Hawaiian rights*, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture and navigation.

2007 D&O COL No. 6 at page 41 (citing *Waiahole I*). CWRM, in its June 20, 2018 D&O, also recited the State’s constitutional obligation to consider the impacts of stream diversions in East Maui on traditional and customary practices of Native Hawaiians at pages 242 through 245, including the Supreme Court of Hawaii’s more recent holding on this subject in *State v. Pratt*, 127 Hawai‘i 206, 277 P. 3d 300 (2012).

We believe that the Draft EIS (including Appendix F) together with the CWRM D&O, provide ample information for the BLNR to consider regarding potential impacts to traditional and customary practices, and that will enable BLNR, at the point that it is deliberating on the Water Lease, to fulfill its constitutional obligation “to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible.” *Ka Pa‘akai* at, 94 Hawai‘i at 35, 7 P. 3d at 1072.

Comment 93: *Appendix F, the Cultural Impact Assessment (CIA), concludes that as long as Stream Flow standards are met in the East Maui streams subject to the 2018 Water Commission decision, all other streams can be diverted with no impacts to traditional Hawaiian cultural practices. It also concludes that the East Maui coasts do not have reefs, and therefore do not support related marine species, even though information in Kama‘aina interviews mentions the importance of stream flows to the abundance of ocean fisheries and related cultural practices of fishing and gathering. This conclusion does not reflect generational knowledge, or marine life and stream life studies from East Maui found in the statements of numerous East Maui kama‘aina included in Appendix F.*

Response 93: Your comment that the CIA "*concludes that as long as stream flow standards are met in the East Maui streams subject to the 2018 Water Commission decision, all other streams can be diverted with no impacts to traditional Hawaiian cultural practices,*" is a misstatement of the CIA's conclusions. Rather, the CIA acknowledges that the Proposed Action may impact Native Hawaiian cultural resources and practices and provides for several recommendations to mitigate those impacts. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

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Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of

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the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, as shown pages 4-158 to 4-159 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action as shown on pages 4-171 to 4-254.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the*

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Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Your comment that the EIS concludes that there are no reefs and does not support related marine life is incorrect. There are no statements in the EIS or within the East Maui Irrigation Assessment of Streams and the Ocean report (Appendix B) or the other technical studies alleging this. Rather, Appendix B analyzed the interactions of the streams in the License Area with the related ocean environments and concluded that:

The effects of stream water on marine waters must be considered minor in these habitats. This result is supported by the physical processes associated with relatively small input of stream water to the vastly larger ocean environment. The prevailing conditions of extreme mixing by physical forces is the most important factor in diminishing the zone of influence of stream water in a marine setting. In all cases where it was possible to sample across the boundary where streams flowed into the ocean, there were sharp gradients reflecting the intense mixing of stream water to background ocean levels. Observation of the habitats in these transition zones indicated that they were primarily composed of sand and barren rock. Owing to continual, intense wave energy, these nearshore areas do not constitute important habitats for coral reef communities and associated marine species. Beyond the narrow transition zone, the influence of stream water is minimal owing to rapid intense mixing. These processes should not be affected by changes in stream flow related to seasonal variation of diversions.

As for the risks of impacts to fishing, the collected data presented in Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be negatively impacted. Please note that the report acknowledged that different results could occur with respect to linking stream discharge to estuarine function in other areas. But due to the harsh physical conditions of East Maui, stream flow rates do not greatly impact marine ecosystem function.

Moreover, Section 4.2.3 of the Final EIS has been updated to discuss that the HSHEP model used by Trutta to conduct an analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals included as Appendix A to the EIS, also considered estuarine reaches present in the stream segments subject to analysis as shown on pages 4-78 to 4-83. Using the HSHEP model coupled with aerial imagery available, the stream mouth areas of each stream subject to analysis were reviewed for the potential for estuary segments present. The presence of a terminal waterfall, possibility of estuary habitat, and the extent of embayment at the stream mouth were also noted. Table 4-6 of the Final EIS shows the results for all of the East Maui

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streams within the License Area associated with the EMI Aqueduct System. Furthermore, the subsequent Table 4-7 of the Final EIS, shows the five streams that have any possibility of an estuarine reach. Of these five streams, three streams (Waiahue, Pi'inaau, and Honomanu) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reach, Pa'akea will have connectivity flow restoration, while 'O'opulua will have no additional flow restoration. Thus overall, the majority of estuarine habitat that exists in East Maui will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83.

Comment 94: *Hawaiian cultural users whose interviews are in the CIA agree: increased stream flows are needed to support stream and marine life in enough abundance to allow traditional gathering from both streams and ocean coastlines. The EIS does not include recent studies of marine fish populations in East Maui or recent interviews with East Maui residents. These residents inform us they have observed that the recent increase in East Maui flows due to the closure of sugar, with stream diversions reduced to 20-25 mgd, has already resulted in increased fish populations in East Maui.*

Response 94: We acknowledge your comment about kama'āina interviews that mention the importance of stream flows to the abundance of the ocean fisheries. Please note that commenters

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of the EIS and CIA participants stated that they have noted both positive changes (increase in fish populations returning to the nearshore coastal environments, increase in water flow rate for taro farming) and negative changes (increased erosion causing near-shore brown water and blockages of culverts from uprooted vegetation) to the regional environment since the halting of diversion after the closing of HC&S commercial sugar operations in Central Maui in 2016. However, as noted in Response #59 above, from an ocean chemistry standpoint, the results of the study in Appendix B suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. See Appendix B, Section 5. The CIA recognizes 25 streams that were identified by community participants as having an estuary environment that may be impacted by streamflow as presented in Tables 14-16 in the CIA.

Moreover, as discussed in Response #59 above, Table 4-7 of the Final EIS shows the five streams that have any possibility of an estuarine reach based on HSHEP model as shown on pages 4-78 to 4-83. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83

The HSHEP model used in Trutta Environmental Solutions' report (Appendix A), it clearly and directly addresses the impacts of streamflow diversion on the native amphidromous stream species (including opae, 'o'opu and hīhīwai). Due to an increase in streamflow under the Proposed Action when compared to historical diversion rates, opae, 'o'opu and hīhīwai are anticipated to have an increase in HU. However, these HU will slightly decrease from current conditions as more water is gradually diverted as the Mahi Pono farm plan develops to full build-out as outlined in Section 4.2.1 of the EIS.

The CIA and EIS identify impacts to the regional environment, taro farming, and freshwater resources within the License Area based public documentation and consultation with the community as presented in Section 4.6 of the Draft EIS. Specifically, Section 4.6 of the Draft EIS states:

4. *Participant Kyle Nakanelua is concerned with the act of diverting water. He explicitly states that “when those places dry up that adversely impacts the way of life, the cultural practice if you will” and it “adversely impacts the people’s way of life that live there.”*
 - a. *To support this claim, Mr. Nakanelua states that ‘ōpae was once prevalent in the streams that flowed through their family property named Lakini. He relates that when he began to regularly clean the property his grandmother would still catch ‘ōpae. He adds that today*

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there is no 'ōpae but there are prawns. When CSH asked if 'ōpae was being overpicked, he replied “no” because “we were the only one there.” He also does not think the introduction of prawns is to blame but believes “that the flow of water is impactful” and has seen the water decline since 1989.

5. *A 2014 declaration provided by Dan Clark from Ke‘anae stated he needs cool, fast running water for optimal kalo production. Due to low stream flow results, there has been an increase in disease to his kalo, which decreases production.*
6. *Jonah Jacintho states in his 2014 declaration that due to a lack of stream flow, fish populations have decreased therefore he cannot fish as much. To increase the population of ocean fish, fresh water is integral for spawning and nutrients. He also added that more water in stream beds would also increase ‘o‘opu, prawn, and hīhīwai populations.*

Section 4.6 of the EIS summarizes the findings of the CIA as follows:

Based on information gathered from the cultural and historical background, and the community consultation, significant cultural resources were identified within the License Area, as well as outside of the License Area. It should be acknowledged that although some of the impacted cultural resources exist outside of the License Area, what takes place within the License Area directly affects these cultural practices and resources. At present, there is documentation and testimony indicating traditional and customary Native Hawaiian rights are currently being exercised within the License Area. Cultural resources, practices, and beliefs were identified as currently existing within the License Area. In addition, East Maui, which includes the License Area and beyond the License Area, maintains a rich subsistence and cultural history.

Additionally, the CIA and Section 4.6 of the Final EIS have been updated to more specifically include identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action based on community consultation as shown on pages 4-239 to 4-252 . The revised CIA includes community input regarding recent changes observed as a result of stream flow changes in the recent past.

Comment 95: *The EIS needs to include studies on current fish populations, and needs to discuss how this trend of increasing fish populations that support traditional Hawaiian gathering practices can continue, rather than not mention that it is happening.*

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Response 95: Regarding your comment that the EIS needs to include studies on current fish populations, as discussed in Response #59, the analysis presented in Appendix B concluded that impacts from the Proposed Action to ocean fish are negligible; therefore there is no scientifically sound reason to undertake a study of ocean fish in East Maui related to impacts from the Proposed Action. Moreover, evaluation of possible impacts on fisheries and nearshore gathering areas would require rigorous “before/after” experiments to determine changes between periods of diversion and non-diversion, with enough time during each phase for ecosystems to come to an equilibrium. As such an experimental set-up is not feasible because conclusions based on existing conditions are the most scientifically reasonable way to evaluate potential changes as presented in the East Maui Irrigation Assessment of Streams and the Ocean report (Appendix B) and summarized in Section 4.2.3 of the EIS. The survey results indicating that nearshore mixing in the study areas was of a magnitude to bring stream-derived nutrients to background marine levels should be adequate to address the concerns brought up in the comments. However, if it was possible to conduct the controlled before/after experiment it would have provided an unequivocal scientifically rigorous set of results to clarify/confirm that this is the case (e.g., changes/no changes to marine nutrient availability). The differentiation between fisheries and gathering areas is that fisheries generally occur offshore in open waters, while gathering areas are within the reach of people from the shoreline.

Regarding your comment that the EIS should discuss this trend as it relates to cultural practices, please note that Section 4.6 of the Final EIS has been updated to include comments received in response to the Draft EIS, which discusses an observed increase in fish populations, as shown on page 4-168.

Comment 96: *The EIS also needs to evaluate the Cultural impacts of rediverting the 12 streams in the Huelo lease area that were not evaluated in the CWRM IIFS proceeding. These streams have had regular flows for the past two years, allowing residents of the surrounding communities a chance to gather native stream life.*

Response 96: The Water Lease would not involve "rediverting" streams, as these 12 streams located within the Huelo portion of the License Area have continued to be diverted both before and after issuance of the CWRM D&O. We understand that the streams you are referring to are those listed in Table 1-3 of the Draft EIS as not being subject to the CWRM D&O (Kōlea, Punalu‘u, Ka‘aiea, ‘O‘opuola, Puehu, Nā‘ili‘ilihaele, Kailua, Hanahana, Hoalua, Waipi‘o, Mokupapa, and Ho‘olawa). Based upon actions taken by parties with an interest in cultural uses, the streams that were the subject of the CWRM IIFS proceedings are presumed to be the streams with the most significance to cultural practitioners because the CWRM proceedings were initiated by NHLC's May 2001 filing of 27 petitions to Amend IIFS on behalf of Na Moku, Beatrice Kepani Kekahuna, Marjorie Walleth, and Elizabeth Lehua Lapenia.

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Moreover, as discussed in Section 1.3.3 of the Draft EIS, on July 23, 2001, NHLC met with CWRM staff to discuss the handling of the 27 petitions, and an agreement was reached that efforts would focus on Honopou, Hanehoi, Waiokamilo, Kualani, Pi'ina'au, Palauhulu, and Wailuānui streams, and expanded to include Puolua (these eight streams being deemed "Priority Streams"). Furthermore, also as discussed in Section 1.3.3. of the Draft EIS, in June 2010 Nā Moku filed a petition for a Contested Case for:

Petitioners' right to sufficient stream flow to support the exercise of their traditional and customary native Hawaiian rights to growing kalo and gathering in, among, and around East Maui streams and estuaries and the exercise of other rights for religious, cultural and subsistence purposes. Specifically, the rights of members to engage in such practices in, on, and near Waikamoi, Puohokamoa, Ha'ipua'ena, Punalau / Kōlea, Honomanū, West Wailuāiki, East Wailuāiki, Kopiliula and Pua'aka'a, Waiohue, Pa'akea, Kapaula, Hanawī streams from HRS § 1-1 and HRS § 7-1 and protected under HRS § 174-101.

As such, there is no indication that the streams that were not subject to the NHLC petitions have significant cultural uses or are impacted by the diversions. Nevertheless, the CIA (Appendix F), which is a regional study, has been supplemented to include an additional analysis of the impacts to cultural resources and practices related to the streams in the License Area, including those that were never the subject of the IIFS petitions. A summary of this discussion is provided in Section 4.6 of the Final EIS, as shown on pages 4-171 to 4-254. Moreover, the 12 streams referred to here *were* analyzed using the HSHEP model to assess changes in native amphidromous stream animal habitat with respect to stream diversions.

Comment 97: *Mitigation Measures. The mitigation measures proposed on page viii need to be strictly enforced; for example, it only takes one exception to introduce an invasive species. In order to make them effective, all mitigation measures must be mandatory. For example, the wording "A monitor should have familiarity with plants of the area" needs to be changed to say "A monitor shall have familiarity with plants of the area." Also, instead of "recommending" consultation with lineal and cultural descendants of the area in the event that iwi kūpuna and/or cultural finds are encountered, such consultation needs to be required. The DEIS also needs to present a detailed plan – to include funding - about how these mitigation measures will be enforced.*

Response 97: HAR § 11-200-17(m) includes in relevant part that a Draft EIS should include "where possible and appropriate, . . . specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken." In this case, it is appropriate to complete the EIS process with the expectation that BLNR will, within the Water Lease, identify the required mitigation measures, including any related funding.

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Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the Board of Land and Natural Resources (BLNR) approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report prepared by the Department of Land and Natural Resources (DLNR) has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. Specifically, one of the content requirements calls for “adaptive management” which seeks (i) to establish measurable objectives, including performance metrics to measure and report the degree to which management actions have been successful in achieving goals and objectives; (ii) monitoring performance metrics to track success; and (iii) establishment of a systematic process to review results and employ adaptive management approaches to improve results where needed. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Comment 98: *The Draft EIS needs to clearly indicate how much diverted surface water, water from development tunnels, and/or water from wells will be available to meet A&B’s diversified ag needs from areas outside (east and west) of the proposed lease area. Specific information should be provided about these sources and their output to the EMI system. Currently, the DEIS only discusses East Maui Lease stream water and well water.*

Response 98: As a point of clarification, the diversified agriculture is being undertaken by Mahi Pono. A&B is not engaging and will not be engaging in agricultural activities in the Central Maui agricultural fields. Your comment regarding source of water "from areas outside (east and west) of the proposed License Area" is unclear. To the east of the License Area is the Hāna region. The EMI Aqueduct System does not extend east of Makapipi Stream. To the west of the License Area are privately owned lands and the water yield from this area has been addressed in the EIS and is accounted for with respect to available water supply to support the Mahi Pono farm plan. Figure 1-1 (EMI Aqueduct System Collection Area) of the Draft EIS depicts the area to the west of the License Area and Section 2.1.2 (East Maui/License Area) of the Draft EIS explains that the EMI Aqueduct System is estimated to divert an additional 4.37 mgd from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Māliko Gulch. Regarding development tunnels, please see Responses #11 and 13 above.

Comment 99: *Information contained in the main body of the DEIS and its Appendices should be fully reflected in the Executive Summary.*

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Response 99: The Draft EIS Executive Summary contained the information called for under HAR § 11-200-17(b), which calls for a concise discussion of the listed elements. The Executive Summary has been refined and clarified to better discuss the body of the Final EIS and its appendices as shown on pages iii to xxiv.

Comment 100: *Maps Need More Clarity: The Fig 1-1 ditch system map does not very clearly delineate the EMI ditch systems. The colors used to indicate abandoned or active ditch sections are not very distinguishable. The dotted lines used to indicate ditch tunnel sections make the relationship of the various ditches hard to determine. Showing sections of the lease area at larger scale (zoomed in) and using contrasting colors to mark tunnel sections would facilitate public review.*

Response 100: As noted above in Response #34, the purpose of Figure 1-1 of the Draft EIS is to depict the water Collection Area. Figure 1-1 outlines in red the 50,000 acre water Collection Area and depicts in green that portion of the water Collection Area that is owned by the State. However, please note that Figure 2-1 of the Draft EIS shows the various ditches / tunnels of the EMI Aqueduct System within the License Area.

Comment 101: *The DEIS does provide several additional maps. (Fig 1-1, 1-3, 2-2, 2-2. All are more detailed, but they are still hard to understand. Fig 1-3 shows the Alexander and Baldwin (A&B) use area for diverted water but does not indicate the County of Maui Department of Water Supply (MDWS) use area that depends upon the EMI diversions. The EIS needs to provide this information.*

Response 101: We acknowledge your comment that the Draft EIS contains several detailed maps. The body of the Draft EIS, not including the consultant studies, contains some 53 maps and figures. As such, we cannot further address your generalized comment about difficulty understanding the maps. However, regarding your comment about Figure 1-3 not showing the MDWS "use area that depends upon the EMI diversions" for clarification, please note that Figure 1-3 is titled "CWRM IIFS Decision & Order Map." It is unclear what you mean by "use area for diverted water," but Figure 1-3 depicts the License Area (in four sections), the streams subject to the CWRM D&O, and the nature of those streams, as determined by CWRM (i.e., fully restored, habitat streams, connectivity streams, non-IIFS streams). Figure 1-3 is not intended to illustrate the service area for the Upcountry Maui Water System that depends on diversions from the EMI Aqueduct System. The Upcountry Maui Water System Service Area is depicted in Figure 2-3 (Upcountry Maui Water System Service Area). However, please note that Figure 2-4 has been added to Section 2.1.3.1 of the Final EIS to depict the three Upcountry Maui Water System's subsystems service areas. See page 2-15.

Comment 102: *Fig 2-3 shows the MDWS service area, but needs to show which parts can be served by the Upper and Lower Waikamoi pipelines, which parts are served by the Wailoa ditch, and which parts are served by wells.*

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Response 102: As discussed above in Response #101, please note that Figure 2-4 has been added to the Final EIS to depict the three Upcountry Maui Water System's subsystems service areas. See page 2-15 of the Final EIS. The Makawao System is serviced by the Wailoa Ditch and the Kaupakalua and Ha'ikū Wells. As discussed in Section 2.1.3.1 of the Draft EIS:

The Kamole-Weir WTP serves the communities of Makawao, Pukalani, Hali'imaile, and Ha'ikū.

The Lower Kula System is serviced by the Lower Waikamoi Flume. As discussed in Section 2.1.3.1 of the Draft EIS:

The Pi'iholo WTP relies on water through the Lower Waikamoi (Kula) Flume, which diverts water from various streams in the Ha'ikū Uka Watershed (Waikamoi, Puohokamoa, Ha'ipua'ena, and Honomanū), previously owned by A&B and now owned by Mahi Pono, and serves the Lower Kula community.

The Upper Kula System is serviced by the Upper Waikamoi Flume. As discussed in Section 2.1.3.1 of the Draft EIS:

The Olinda/Upper Kula WTP relies on water from the Upper Waikamoi (Kula) Flume, which diverts water from various stream diversions in the Ha'ikū Uku Watershed (Waikamoi, Puohokamoa, and Ha'ipua'ena), and serves the Upper Kula, Ulupalakua, and Kanaio communities.

Comment 103: Fig 2-4 shows MDWS treatment plants and the upper Kula ditch, but needs to show which areas are served by these facilities.

Response 103: As discussed in Response #101, Figure 2-4 has been added to Section 2.1.3.1 of the Final EIS to depict the three Upcountry Maui Water System's subsystems service areas. See 2-15 of the Final EIS.

Comment 104: *The location of the MDWS aqueduct systems (Upper and lower Kula Pipelines) which occur almost entirely outside the lease area and are not dependent upon continued water diversion from the lease area by EMI is not illustrated at all in the DEIS; it needs to provide this information.*

Response 104: You are correct that the water sources for the Upper and Lower Kula Pipelines (or Flumes) are not dependent on water diversions from the License Area. However, as discussed above in Response #6 above, these systems are situated on private land now owned by EMI and are operated and maintained by EMI staff. The existing agreements in place that allow the MDWS to access these sources of water are contingent upon the issuance of the Water Lease.

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Comment 105: *The DEIS needs to show and discuss the area containing streams outside the lease area that are diverted by EMI and provided to the A&B use area regardless of the outcome of the License agreements. All of these are important parts of the information the Board of Land and Natural Resources (BLNR) needs in order to understand what the EMI system does. If these items are not included on this map, new maps should be created to clearly include this information.*

Response 105: The information you are requesting is within the Draft EIS. The Draft EIS depicts and discusses the area that is outside of the approximately 50,000 acre water Collection Area; the EMI Aqueduct System diverts water from the Collection Area and from private land to the west of the Collection Area. Figure 1-1 (EMI Aqueduct System Collection Area) depicts the water Collection Area in red. Figure 1-1 also shows the streams that are diverted between the western end of the State-owned License Area and Māliko Gulch. Section 2.1.2 (East Maui/License Area) of the Draft EIS explains that the EMI Aqueduct System is estimated to divert an additional 4.37 mgd from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Māliko Gulch.

Comment 106: *In chapter 4, Fig 4-15, the “Haiku” label is actually in Hamakuapoko west of Maliko Gulch. Haiku is located east of Maliko Gulch.*

Response 106: Please note that Figure 4-15 of the Draft EIS shows the Land Study Bureau soils designations in Central Maui and that the “Haiku” label has been corrected to be east of Māliko Gulch.

Comment 107: *In Appendix E, fig 47, the field inspections map has the label “Ho‘olawa” where the stream and community of Honopou is located. It has the label “Haiku” where the Honopou stream intake on New Haiku ditch may be located. These labels create confusion, and need to be corrected.*

Response 107: The label “Ho‘olawa” and “Haiku” were incorrectly used and have been removed, as it was not the purpose of this figure to label communities. The intention of Figure 47 in Appendix E of the Draft EIS is to depict the names of the sluice gates of the EMI Aqueduct System. Figure 47 in Appendix E of the Draft EIS has been revised as Figure 53 in Appendix E of the Final EIS. See Appendix E enclosed in the Final EIS.

Comment 108: *The DEIS states that, “Settlements along Hāna Highway from west to east, toward Hāna, include Huelo and Kailua makai of the Huelo License Area, Ke‘anae and Wailua makai of the Ke‘anae License Area and Nāhiku makai of the Nāhiku License Area.” Many communities in the lease area have no public water systems, and the DEIS needs to specifically discuss mitigation plans to restore sufficient flows to Puniawa, Ho‘olawa, Mokupapa, Honokalā, Waipio, East Waipio, Waipio iki and Hanawana streams to provide domestic water to the hundreds of families who live in these communities. Their streams are not part of the 2001 IIFS*

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petition for the East Maui Lease areas, yet the continued diverted conditions of their streams impacts their daily lives and their rights to have sufficient water for their domestic needs.

Response 108: Your comment regarding the settlements along Hāna Highway is unclear. However, please note that the statement, “*Settlements along Hāna Highway from west to east, toward Hāna, include Huelo and Kailua makai of the Huelo License Area, Ke‘anae and Wailua makai of the Ke‘anae License Area and Nāhiku makai of the Nāhiku License Area.*” is not included in the Draft EIS. It appears that this statement was in the EISPN.

Regarding your comment about many communities in the "lease area" (i.e., License Area), please note that there are not communities within the License Area. However, there are East Maui communities located below the License Area. We acknowledge your comment that many communities do not have public water system. However, please note that this is under the purview of the MDWS, not EMI.

Regarding your comment about mitigation plans to restore sufficient flows to the streams mentioned in Comment #108 above, please note that the EMI Aqueduct System has historically diverted all of those streams except for Honokalā Stream. However, Puniawa is considered a tributary to Honopou Stream, which is ordered to be fully restored under the CWRM D&O. Hence, it will not be diverted. We acknowledge that the Draft EIS does not specifically talk about how to *restore* the non-petitioned streams, which includes the streams you mentioned above in Comment #110. Under the Proposed Action, the proposed Water Lease requests to divert the maximum amount of water from the License Area after compliance with the CWRM D&O. Please note that these streams were included as part of the overall analysis of the EIS and associated technical studies. Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The HSHEP model in Appendix A and summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species.

Regarding the East Maui streams in the License Area, the EIS presents four scenarios using the HSHEP model. The diversion amounts were determined in advance and modeled for those specific scenarios. Due to common sense technical challenges to the HSHEP model, not all scenarios were presented or analyzed. To provide context, there are approximately 388 individual diversions in the EMI Aqueduct System. Potentially any of these diversions could: (1) have different levels of water restoration mandated at the diversion location; (2) could have engineering changes to increase fish passage and decrease larval entrainment; and/or (3) have the sequence of water restoration or engineering changes include numerous different scenarios with for example, 50% water return on diversion 1, an engineering change on diversion 2, a 60 % water return and an engineering change on diversion 3, and so on. This could result in many different scenarios - too many for meaningful review, and each potential adjustment would not alter the overall findings as presented in the Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP Model). To be more specific on the

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number of potential iterative scenarios, there is a formula for the number of permutations = n^r . So, in a stream with 3 diversions, if we wanted to present different flow restoration levels, 0 to 100% in 10% intervals, we get 11^3 which equals 1,331 different scenarios. If a single engineering adjustment is added (2 options of no change and new design), the result is 22^3 , which equals 10,648 scenarios.

For example, there are 10 diversions on Nā'ili'ilihale Stream, which is one of the non-IIFS streams. Applying different flow restoration levels 0 to 100 in 10% intervals, as discussed above, there are approximately 25,937,424,601 scenarios. Twenty-five billion scenarios are far too many to reasonably understand or consider for management actions. Also note that no engineering changes to those diversions to increase fish passage or decrease larval entrainment were considered in the example. Thus, the number of permutations involved in considering all options for the 300+ diversions in the East Maui streams precludes a systematic optimization of all possible scenarios.

In other words, the difficulty lies in the complexity and the number of possibilities created by those questions regarding the restoration of the non-petitioned streams while attempting to determine the answers to best balance the offstream uses related to the Proposed Action. Therefore, while questions regarding restoration of the non-IIFS streams are valid, the questions need to be constrained to a smaller subset of possibilities to make optimization testing possible. With that caveat stated, some general guiding concepts can be concluded to minimize impacts to the non-petitioned streams from stream diversions.

With respect to diversion locations and amount for non-petitioned streams:

1. Regardless of the way the water is diverted, greater percentages of total streamflow diverted generally result in lower amounts of instream habitat for native stream species. However, when diversion amounts are similar among scenarios,
 - a. Diverting comparable amounts of water at higher elevation diversions is less damaging to instream habitat for native stream species than diverting that water at lower elevation diversions.
 - b. Returning comparable amounts of water at the higher elevation diversions and allowing it to flow downstream without additional diversion will result in more instream habitat than partial water diversion at all diversions due to the compounding impact of entrainment at each diversion.

With respect to modifications of the diversion for improved passage and decrease entrainment:

2. Improvements in diversion passage result in more suitable habitat at most flow amounts.
3. At lower flow restoration amounts, modifications to improve passage result in greater gains in suitable habitat than at higher flow restoration amounts.

Please note that Section 4.2.1 of the Final EIS has been revised to include a general discussion more specific to the impacts and mitigations associated with the non-petitioned streams, and how

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stream flow restoration will influence Habitat Units in the License Area as shown on pages 4-63 to 4-67. It has also been noted in Section 4.7.2 of Final EIS that many of the communities downstream of the EMI Aqueduct System adjacent to the non-petitioned streams do not have access to MDWS water and depend upon these streams to meet their domestic water use as shown on page 4-263.

It is assumed that restoration scenarios of the non-petitioned streams would fall under the Reduced Water Volume alternative. As discussed in Response #73 above, the HSHEP model requires specific diversion conditions at each diversion. Applying the model to the Reduced Water Volume alternative would require information regarding where stream flows are proposed to be increased over the Proposed Action and the amounts. Given such information, the HSHEP model is able to readily calculate the number of remaining Habitat Units (HU) in any given scenario.

Comment 109: *Section 1.1 states that the “need” for the Water Lease is due to the lack of existing adequate alternative sources of water and infrastructure to meet these demands. This section of the DEIS needs to clearly define the amount and location of A&B acreage that actually needs irrigation, the availability of additional EMI sources of stream water outside the lease area, and the availability of reclaimed water from the Wailuku-Kahului wastewater treatment plant, to provide that irrigation.*

Response 109: Citing the Draft Maui Island Water Use and Development Plan (March 2019), Section 1.1 of the Draft EIS includes a statement that "A need for the Water Lease is the lack of practicable alternative sources of water and the lack of alternative infrastructure to meet these demands." It is unclear what you mean by "A&B acreage that actually needs irrigation." As discussed throughout the Draft EIS, the Central Maui fields formerly in sugarcane production are now owned by Mahi Pono and are being used, and planned for use, for diversified agriculture. The Mahi Pono farm plan, provided in Table 2-1 of the Draft EIS lists the acreage that Mahi Pono proposes to irrigate under the Proposed Action as shown below:

Proposed Use	Acres	Gallon Per Acre a Day	Surface MGD	Ground water MGD	Total MGD	Annual MGD	% of Total
<i>Community Farm</i>	800	3,392	1.87	0.83	2.70	987	3.28%
<i>Orchards (citrus, mac nuts, beverage crops)</i>	12,850	5,089	53.39	12.04	65.43	23,883	79.48%
<i>Tropical Fruits</i>	600	4,999	2.07	0.87	2.94	1,073	3.57%
<i>Row and Annual Crops</i>	1,200	3,392	3.14	0.95	4.09	1,491	4.96%
<i>Energy Crops</i>	500	3,392	1.18	0.53	1.70	622	2.07%
<i>Pasture, irrigated</i>	4,700	1,161	4.20	1.25	5.46	1,992	6.63%
<i>Pasture, unirrigated</i>	9,100	0	0	0	0.00	0	0.00%

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<i>Green Energy</i>	250	0	0	0	0.00	0	0.00%
TOTAL	30,000	2,744	65.86	16.47	82.33	30,047.77	100.00%

Hence, under the Proposed Action, approximately 9,100 acres would be unirrigated. Moreover, Consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

Table 3-1 of the Draft EIS provides the Mahi Pono farm plan in the event that no Water Lease is issued as shown below:

<i>Proposed Use</i>	<i>Acres</i>	<i>GPAD</i>	<i>Surface MGD</i>	<i>Groundwater MGD</i>	<i>Total MGD</i>	<i>Annual MGD</i>	<i>% of Total</i>
<i>Community Farm</i>	300	3,392	0.70	0.26	0.97	353	3.25%
<i>Orchards (citrus, mac nuts, beverage crops)</i>	4,180	5,089	17.36	3.39	20.75	7,574	69.77%
<i>Tropical Fruits</i>	200	4,999	0.69	0.26	0.95	349	3.21%
<i>Row and Annual Crops</i>	400	3,392	1.15	0.82	1.98	722	6.65%
<i>Energy Crops</i>	200	3,392	0.47	0.20	0.68	248	2.28%
<i>Pasture, irrigated</i>	3,800	1,161	3.40	1.01	4.41	1,610	14.83%
<i>Pasture, unirrigated</i>	20,670	0	0	0	0.00	0	0.00%
<i>Green Energy</i>	250	0	0	0	0.00	0	0.00%
TOTAL	30,000	991	23.79	5.95	29.74	10,855.16	100.00%

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Hence, under the No Action alternative, approximately 20,670 acres would be unirrigated. However, food crop production and beneficial economic impacts would be significantly less than the Proposed Action as discussed in Section 3.4.13 of the Draft EIS.

Section 2.1.2 of the Draft EIS, as well as other sections of the Draft EIS, discuss the approximately 4.37 mgd that is collected by the EMI Aqueduct System after it leaves the License Area.

The availability of the use of reclaimed water from the Wailuku-Kahului Wastewater Reuse Facility (WWRF) is discussed in Draft EIS Section 3.1.1.2 (Reclaimed Water), which provides an analysis of the feasibility of the use of reclaimed water from the Wailuku-Kahului WWRF to irrigate the Central Maui fields. As discussed, the recycled water alternative using existing R-2 water from the Kahului WWRF could be considered an alternative as supplemental source. However, R-2 water has limited useability on crops. County of Maui Department of Environmental Management (DEM) does not intend to send this R-2 water to the Central Maui agricultural fields. Further consideration of this alternative has been included in Chapter 3 of the FEIS, which has also been supplemented with a discussion about the potential new reuse/effluent disposal facility in Central Maui to be located south-west of the Kahului WWRF that is being considered by the County Department of Environmental Management. See pages 3-9 to 3-11 of the Final EIS.

Comment 110: *It also needs to note that a portion (roughly half) of the water in the Upcountry MDWS system comes from diversions outside the proposed lease area, or from fresh water wells, and is not dependent on the EMI system.*

Response 110: As discussed above in Response #6, Draft EIS Section 2.1.3.1 (Upcountry Maui Water System) states that the MDWS Upcountry Maui Water System relies on three surface water sources, which accounts for approximately 80-90 percent (13 mgd) of water delivered through the Upcountry Maui Water System (CWRM D&O, FOF 799), but that only one of the three surface water sources is delivered directly by the EMI Aqueduct System, through the Wailoa Ditch. That same section of the Draft EIS explains that "*approximately 10-20 percent of water delivered through the Upcountry Maui Water System comes from a series of basal aquifer wells: the Ha'iku Well, Po'okela Well, and the two Kaupakalua wells.*" That section of the Draft EIS also stated that a total of 4.9 mgd of water was delivered from these wells. However, that language requires clarification, and correction as recent input from the MDWS indicates there is only one Kaupakalua well, and has been restated as follows: "*These three wells have a total production capacity of about 3.4 mgd of water.*" CWRM D&O, FOF 811. Applicable edits have been made to Section 2.1.3.1 of the Final EIS to reflect this clarification.

Comment 111: *The DEIS also needs to discuss the new Upcountry wells being planned by the MDWS and DHHL as potential "alternative sources". None of this is made very clear by maps or text in the DEIS, and this needs to be corrected.*

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Response 111: We are currently not aware of any wells being planned in Upcountry Maui nor are there any permits on file for new wells by MDWS for the Upcountry Area. Moreover, MDWS has indicated that it has no current or anticipated expansion or improvement plans for the MDWS system within the EIS areas based on additional consultation after the publication of the Draft EIS. The letter dated July 24, 2020 from MDWS indicating this has been added to the Final EIS as Appendix P. We are also unaware of any wells being planned in Upcountry Maui by DHHL.

Comment 112: *The DEIS needs to discuss the current “Memorandum of Understanding” (MOU) executed between EMI and MDWS. It should also refer to the section of the MOU where both A&B and DWS agree to work on plans to restore stream flows if agricultural needs change (which they already have!!)*

Response 112: The language you refer to above was in an amendment to the MOU that was not consummated and is not in effect. The current agreement in place states that "A&B and EMI acknowledge and agree that, in performing their obligations under this Agreement they shall observe and comply with their obligations under the [JUNE 2018 CWRM D&O] IIFS."

Comment 113: *The DEIS should specify those plans for stream restoration that have been discussed by A&B and DWS.*

Response 113: There have not been any discussions between A&B and MDWS regarding stream restoration. Please see Response # 112, explaining that the amendment to the MOU you referred to was never consummated and is not in effect.

Comment 114: *The DEIS should have an accurate list of streams that are diverted by the Wailoa-Ko'olau Ditch: East & West Wailua Iki, and East & West Wailua Nui, Waipio, Hoalua, Ho'olawa, Na'ili'ili haele, Kailua, Waiohue, Kopili'ula, Wahinepe'e, Waiokamilo, Puakea, Puaka'a and Palauhulu.*

Response 114: Section 2.1.3.1 of the Draft EIS notes that the Kamole-Weir WTP receives surface water from the Wailoa Ditch, which, in turn receives water from diversions of various streams extending as far east as Makapipi Stream at the eastern border of the License Area through the Koolau Ditch. The streams that have historically been diverted by the Wailoa / Koolau Ditches are Honopou, Hanehoi, Puolua, Alo, Waikamoi, Puohokamoa, Ha'ipua'ena, Kōlea, Punalau, Honomanū, Nua'ailua, Pi'ina'au, Paluhulu, East and West Wailuānui, East and West Wailuāiki, Kopili'ula, Pua'aka'a, Waiohue, Pa'akea, Waia'aka, Kapā'ula, Hanawī, and Makapipi streams. However, as noted in Section 1.3.4 of the Draft EIS, some of these streams are no longer diverted per the CWRM D&O, such as Hanehoi, Puolua (partial-not completely), Pi'ina'au, Palauhulu, East and West Wailuānui, West Wailuāiki, Waiohue, and Makapipi streams.

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Comment 115: *The Alternative's section of the DEIS needs to discuss crops and growing methodologies that will use significantly less water than the maximum amount allowed by the IIFS. The Maui Tomorrow Foundation's report, "Mālama 'Āina: A Conversation About Maui's Farming Future," provides information on these proven methods.*

Response 115: Under the Proposed Action, as discussed in Response #111 above, there are approximately 9,100 acres planned to be unirrigated with the current Mahi Pono farm plan, even with the full allocation of the water. As discussed in Response #45 above, Mahi Pono intends to plant additional crops in areas that are currently planned to be unirrigated pasture due to the lack of enough water to irrigate all 30,000 acres of land should water demands of the planned crops reduce.

Comment 116: *HC&S historically used their brackish wells for up to 40% of their water needs up to 2002. They are part of a reliable system. Despite this, A&B also reported being short of water 10 months out of the year, even though they had unrestricted access to all of the water they could divert from East Maui, and 25 mgd from Na Wai Eha and their system of 15 wells. This needs to be discussed in the EIS.*

Response 116: The information you recite in Comment #116 is addressed in Section 2.1.4 of the Draft EIS which explains that the Central Maui Field Irrigation System has brackish groundwater wells that can supplement surface water to approximately 17,200 acres of the Central Maui agricultural fields at the lower elevations. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water as noted in Response #51. During sugarcane operations, the combined pumping capacity of A&B's 15 brackish water wells was 228 mgd of brackish water, but the true instantaneous pumping capacity of the wells – the most that can be pumped over 3 to 5 days – was 115 mgd during sugar cultivation, after which sump levels started to decline. From 1986 to 2013, A&B pumped an average of 71 mgd from the brackish water wells; during the 2008-to-2013 period, these wells delivered about 70 mgd of brackish groundwater to the lower-elevation fields. This was a suitable source of water for sugarcane during droughts because sugarcane can tolerate periodic use of water with higher salinity levels. However, please note that Section 2.1.4 of the Final EIS regarding the description of the brackish groundwater wells that serve the Central Maui Field Irrigation System has been revised to accurately reflect the number of wells that can serve Mahi Pono, as not all were a part of the sale transaction between Mahi Pono and A&B as shown on page 2-25 of the Final EIS.

Moreover, with respect to the Mahi Pono farm plan, because of salinity and the salt tolerance of diversified agricultural crops, which are less salt-tolerant than sugarcane, the use of brackish water on the lower fields is assumed to be limited to about 30% of the water applied. Combining the upper and lower fields, the overall water split across all 30,000 acres would be approximately 80% surface water and 20% brackish groundwater water. If insufficient water is available from the EMI Aqueduct System, then crop farming will have to be reduced no matter how much

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brackish water was available. Thus, we disagree with your statement that the brackish wells are part of a 'reliable system'. Additionally, the sustainable yield of the underlying aquifers as well as the quality of water are uncertain in light of the fact that significantly less recharge from imported East Maui waters will occur. Historically, the sustainable pumping capacity of these wells was highly dependent on irrigation recharge and the positive benefits to the underlying aquifers.

Comment 117: *The Lowrie, New Hamakua, Manuel Luis, and Center Ditches intercept and divert dozens of streams. A complete chart of all the ditches and diversion points inside and outside of the lease area should be provided in the EIS.*

Response 117: You are correct that the ditches mentioned in your comment above divert several streams. Regarding your request a chart of all the ditches and diversions inside and outside the License Area, Section 2.1.2 of the Draft EIS describes and depicts the ditches of the EMI Aqueduct System within and outside the License Area. Specifically, Section 2.1.2 of the Draft EIS states:

The EMI Aqueduct System spans the State-owned License Area which includes four areas in East Maui, known as the Nāhiku, Ke 'anae, Honomanū, and Huelo. The EMI Aqueduct System consists of approximately 388 separate intakes, 24 miles of ditches, and 50 miles of tunnels, as well as numerous small dams, intakes, pipes, 13 inverted siphons and flumes. The EMI Aqueduct System collects surface stream water from approximately 50,000 acres of land (Collection Area), of which approximately 33,000 acres are owned by the State of Hawai'i (License Area), and the remaining approximately 17,000 acres are privately owned by EMI and Mahi Pono.

The EMI Aqueduct System starts at Makapipi Stream, in the Nāhiku portion of the License Area, with the Koolau Ditch. The Koolau Ditch traverses westward across the Ke 'anae License Area and into the Honomanū License Area where it crosses paths with the Spreckles Ditch. This is where streams had multiple diversions at different levels to supply water to the EMI Aqueduct System. Separating higher elevation ditches allows them to maintain the very slight slope necessary to convey flows by gravity over long distances to irrigate higher elevation fields. This avoids the cost of energy required to pump water up from ditches delivering water at lower elevations. As the system continues westward, the Koolau Ditch transitions at the boundary between the Honomanū and Huelo portions of the License Area to the Wailoa Ditch. Makai of the Koolau/Wailoa Ditch, are the Manuel Luis and the Center Ditch. At Waikamoi Stream, the New Hamakua Ditch begins, running parallel to the Wailoa Ditch, but at a lower elevation.

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The Spreckles Ditch terminates its mauka segment at Waikamoi Stream, and begins its makai segment at Ka‘aiea Stream, until it converges with the Lowrie Ditch at Nā‘ili‘ilihaele Stream. Makai of Lowrie Ditch is the Haiku Ditch. At Honopou Stream, the water collected within the License Area by the EMI Aqueduct System exits the License Area. Crossing this western boundary of the License Area in descending elevation are the Wailoa Ditch, the New Hāmākua Ditch, the Lowrie Ditch, and the Haiku Ditch. West of Honopou Stream, the EMI Aqueduct System traverses land that was largely owned by A&B and is now largely owned by Mahi Pono. Additional flows from streams located on this land are diverted by the EMI Aqueduct System until it crosses Maliko Gulch beyond which there are no stream diversions. Crossing Maliko Gulch in descending elevation are the Wailoa Ditch, Kauhikoa Ditch, Lowrie Ditch, and the Haiku Ditch. Figure 2-1 depicts the EMI Aqueduct System in East Maui identifying the system’s ditches, and major stream diversions within and outside the License Area. Figure 2-2 depicts the major ditches that transport water to the agricultural fields in Central Maui.

Regarding all diversion points, as discussed throughout the EIS, it is estimated that there are approximately 388 intakes that span over 50,000 acres. Hence, as discussed in Section 1.3.1 of the Draft EIS, the related graphic depicts the major diversions associated with the EMI Aqueduct System. Specifically, Section 1.3.1 of the Draft EIS states:

Figure 1-1 illustrates the EMI Aqueduct System overlaid on the Department of Land and Natural Resources (DLNR) Division of Aquatic Resources (DAR) geographic information system (GIS) data obtained from the State Office of Planning’s GIS download portal. An electronic drawing of the EMI Aqueduct System was georeferenced by Akinaka & Associates, Ltd. (Akinaka) to depict major diversions on East Maui streams shown on a United States Geological Survey (USGS) base layer map obtained from ESRI. Due to the complexity of the EMI Aqueduct System and the level of detail shown on the map, not all of the minor diversions could be associated with a stream or tributary.

Comment 118: *The County’s upper and lower Kula pipelines traverse EMI lands, and are serviced by intakes on the upper reaches of several streams that flow through the East Maui lease area. The intakes, mostly above the East Maui lease area, are maintained by EMI, which charges the county for “water delivery” that arrives at the DWS reservoirs through the Kula pipelines. It is important that the DEIS clearly explains the workings of this system.*

Response 118: The information you are seeking is in Section 2.1.3.1 of the Draft EIS, which describes the MDWS Upcountry Maui Water System in detail, as well as in Responses #5 to #13.

Comment 119: *The DEIS should discuss the alternative of the system being managed as a public irrigation district, being managed by a partnership of agencies and stakeholders, and*

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other possible management scenarios. Maui DWS also referred to a need to have the DEIS discuss these options in their comments.

Response 119: The Draft EIS considered alternative ownership / management of the EMI Aqueduct System as discussed in Response #38 above describing that Section 3.1.2 of the Draft EIS contemplates alternative ownership of the EMI Aqueduct System. Also as discussed above, that section of the EIS has been further modified based on the County's TIG Report which was prepared after publication of the Draft EIS as shown on pages 3-19 to 3-20. However, please note that the alternatives that were fully analyzed are those that were deemed reasonable as per HAR § 11-200-17(f). The EMI Aqueduct System is owned by EMI and is not for sale or lease. The EMI Aqueduct System runs through both EMI-owned land and State-owned land. Through a water lease process, the BLNR does not have legal authority to require EMI to allow others to enter upon its lands or use the EMI Aqueduct System, and it would be impossible to operate the EMI Aqueduct System without access to the system in its entirety. As discussed in Response #29 above, the EMI Aqueduct System is owned by EMI, however, the EIS acknowledges that some of the lands underlying the EMI Aqueduct System are owned by the State. Pursuant to the 1938 Agreement, the Territory of Hawai'i (now the State) granted perpetual easements to EMI for the placement of the EMI Aqueduct System. Therefore, it is unreasonable to assess the comparative impacts of alternatives that seem highly speculative if not outright impossible, such as the EMI Aqueduct System being managed by a public irrigation district, partnership of agencies, or otherwise. Hence, to assess alternative ownership at this point is too speculative and unreasonable.

Moreover, as discussed in Response #76 above, on July 19, 2019, the Maui County Board of Water Supply formed the subject TIG to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System.

Comment 120: *The DEIS should also discuss the option of individual lease areas being awarded to the residents of the area who depend upon the streams. Dismissal of this alternative as "speculation" and as offering "no environmental benefit" does not meet the required EIS content standard that requires a realistic examination of alternatives.*

Response 120: The EIS was prepared to analyze the impacts of the proposed Water Lease consistent with the objectives and purpose of the proposed Water Lease as described in Sections 1.1 and 1.2 of the EIS, including the use of the EMI Aqueduct System. The scenario you describe is entirely outside of the purpose and need for the Proposed Action and is therefore not a realistic or reasonable alternative for the purposes of this EIS.

Comment 121: *The transition of other plantation ditches to irrigation districts has already happened to several Hawaii systems, and this alternative needs to be examined just as thoroughly as the evaluation of the alternative of Mahi Pono getting 88 mgd of East Maui water is examined.*

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Response 121: Please see Response # 120 above. Such a scenario is not consistent with the stated objectives (see HAR § 11-200-17(f)) of the Proposed Action. See EIS Section 1.2, which provides:

In general, the objectives of the issuance of the Proposed Action (Water Lease) are:

- *Preserve and maintain the EMI Aqueduct System, including its access roads*
- *Continue to meet domestic and agricultural water demands in Upcountry Maui*
- *Continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses)*
- *Continue to serve community water demands in Nāhiku*

Comment 122: *The alternatives section needs to discuss a variety of updated fee schedules and a funding structure that creates enough revenue to actually actively manage the lease lands for watershed productivity.*

Response 122: It is expected that a budget for management of the License Area lands for watershed productivity will be part of fulfilling the watershed management plan requirement under HRS § 171-58. There are many existing mauka watershed plans, including those implemented by the State's Division of Forestry and Wildlife (DOFAW) and groups like the Watershed Partnerships. As discussed in Section 2.1 of the Draft EIS, A&B was a founding member of the East Maui Watershed Partnership (EMWP), which was the first watershed partnership in the State of Hawai'i and which served as a model for other watershed partnerships throughout the State. In reviewing existing watershed management plans in general, however, DLNR has recently determined that some of the existing watershed plans are not always directly correlated to the water lease area and some plans are old and outdated. In certain places, new threats to watershed health are not addressed in existing watershed plans. Additionally, DLNR determined that estimated budgets in such existing plans may not reflect the current cost of management if the plan is over 5 years old. As such, DLNR will work with proposed water lessees to determine if any existing plan meets the minimum content requirements and sufficiently addresses the protection of watershed forests and fresh water resources in the License Area. If it does not, DLNR will work with the lessee to determine the specific actions needed and jointly develop a new plan or update the existing plan as noted in Response #71 above. It should be noted that the existence of a watershed management plan does not absolve a water lessees' duty to help with the implementation of management actions. A lessee must provide DLNR proof that it is already contributing to the protection of the watershed, and membership in a Watershed Partnership may not fulfill the requirement of implementation.

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DLNR and a water lessee will jointly develop a watershed management plan that cites existing management plans, meets the minimum content requirements, and outlines what reasonable management practices are needed for the water lease area and the current estimated costs associated with implementation. The new plan will be specific to the watershed(s) associated with the lease (the sources that feed the lease area) and management will be based on current estimated costs. One of the required elements of a watershed management plan is a budget, which entails a) an estimate of costs and categories of expenditures needed; and b) potential sources of funding for implementing the actions. See pages 2-2 to 2-4 of the Final EIS.

Comment 123: *The DEIS should clearly explain that no one else has bid on these East Maui leases, and A&B/EMI have had a defacto monopoly on their use.*

Response 123: Section 1.3.2 of the Draft EIS provides a history of the EMI Aqueduct System from the 1870s forward. That is followed by Section 1.3.3, which states that since 1876, A&B, or its predecessors and affiliates, have been issued from the Kingdom, the Territory and then the State of Hawai‘i, various leases, agreements, licenses, and permits that authorized the development, diversion, transportation and use of government-owned water from streams in East Maui within approximately 33,000 acres owned by the Territory/State.

Comment 124: *Appendix B states that the amount of water flowing in streams has no impact on terrestrial flora and fauna. Appendix F says that cultural impacts are addressed by the 2018 CWRM decision. The DEIS needs to discuss how industrialization and dewatering of streams has left lasting and continuing impacts on the watersheds and the community members who dwell there, and who are trying to perpetuate native Hawaiian cultural practices despite artificially fluctuating water levels. The EIS should acknowledge those impacts and propose mitigation that will achieve the following:*

- a) restore watershed health and productivity in lease areas*
- b) restore native stream life and viable stream flows for traditional agriculture, including in the Ha‘ikū and Huelo communities.*
- c) restore soil health and productivity, and adopt other regenerative practices such as windbreaks and Keyline contouring to reduce water demand in central Maui.*

Response 124: Regarding your comment that Appendix B states that the amount of water flowing in streams has no impact on terrestrial flora and fauna, please note that Appendix B (East Maui Irrigation Assessment of Streams and the Ocean), analyzes the nearshore coastal environment and the amount of land-based nutrients delivered from stream into the ocean. We believe you meant to refer to Appendix C (Terrestrial Flora and Fauna Technical Report). However, nowhere in Appendix C is it stated that the amount of water flowing in streams has no impact on terrestrial flora and fauna. Rather, Appendix C concludes that under the Proposed Action, there would not be significant change to terrestrial flora and fauna that already currently exists. It is expected that the vegetation cover types would remain substantially the same as discussed in Section 4.4 of the Draft EIS. Moreover, mitigation and avoidance measures are

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discussed in Section 4.4 of the Draft EIS to prevent further change / introduction of invasive species into the License Area.

Regarding your comment that Appendix F (Cultural Impact Assessment) says that cultural impacts are addressed by the CWRM D&O, please note that this is not stated in Appendix F. Rather it is stated in Appendix F and Section 4.6 that, "...*the CWRM D&O has the potential to reduce or eliminate this cultural impact.*" Moreover, the discussion of cultural resources and impacts has been expanded in Section 4.6 of the Final EIS with respect to East Maui to take into account additional outreach that was undertaken in connection with comments submitted in response to the Draft EIS. The CIA found that the CWRM D&O did in fact reduce many cultural impacts, specifically those related to taro farming. See pages 4-242 to 4-244 of the Final EIs.

Regarding your comment that the Draft EIS should discuss how industrialization and dewatering streams has left lasting and continuing impacts on the watersheds, please note as noted in Response #15 above, we acknowledge that an EIS must consider cumulative impacts, which means "the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions." HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision-making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease. However, please note that streams in East Maui have been diverted for over a century and it is not scientifically possible to fully document impacts that first took place more than a century ago as pre-diversion data does not exist. Moreover, we acknowledge that cultural practices and subsistence lifestyles that are unique to East Maui communities have a direct relationship with the health and abundance of native stream and estuarine habitats, as well as the region's overall environmental integrity.

Regarding your suggestion that the EIS include mitigation measures to restore watershed health and productivity in the License Area, please note as discussed in Response #23 above, the lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. It is recognized that Hawai'i's fresh water originates from the forest, which capture and absorb hundreds of inches of rain each year, allowing for slow infiltration and replenishment of our aquifers and streams. Based upon this understanding, the legislature added sub-section (e) to HRS § 171-58, requiring the incorporation of a watershed management plan into all water lease agreements to help protect fresh water resources (surface and ground water). In addition to sustaining ground and surface water supplies, healthy forests reduce erosion by holding soil in place, improve water quality, and provide habitat for unique and endangered plants and animals. Focusing on watershed management plans that target mauka protection actions (fencing, removal of hooved animals from important watershed forests, invasive weed control, etc.) that benefit native forests is essential if water lessees are going to have a reliable long-term supply of fresh water. As discussed in Section 2.1 of the Draft EIS, HRS § 171-58 requires the BLNR to jointly develop and implement a watershed management plan with the

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lessee of any water lease. A&B was a founding member of the East Maui Watershed Partnership. Under the Proposed Action, it is anticipated that the Water Lease lessee will continue to pursue watershed management activities either through an existing watershed management plan or a newly developed watershed management plan or some combination of both. The existing EMWP Management Plan was prepared in July 2009 and amended in July 2018, attached to the EIS as Appendix O. The EMWP Management Plan describes the watershed resources such as water, cultural / physical resources, native flora and fauna, and recreational resources. The EMWP Management Plan identifies the watershed threats and management objectives for the East Maui Watershed.

Regarding your suggestion that the EIS include mitigation measures to restore native stream life and stream flows for traditional agricultural practices, as discussed in Response #18 above, the CWRM D&O addressed the needs for kalo farming for the vast majority of streams that are diverted and proposed for diversion under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS, including within the Huelo area. It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation.

However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches as noted in Appendix I and Section 4.7.4 of the Final EIS.

Taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Regarding your suggestion that the EIS include mitigation to restore soil health in Central Maui through the use of windbreaks, keyline contouring, and other measures, as discussed in Section 4.1.2 of the Draft EIS:

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Under the Proposed Action, the agricultural fields in Central Maui will be converted to a diversified agricultural farming operation by Mahi Pono. The soils in Central Maui have already been disturbed from over a century of sugarcane cultivation in the region. Mahi Pono's diversified agricultural operation will include soil preparation to remove the remnants of sugarcane and other vegetation from the fields as needed. These preparations include the application of effective micronutrients, plastic removal, pH adjustments, and the application of organic matter. Soils will be gathered and replaced or moved into other field locations, as needed, and activities such as soil amendment will follow in preparation for planting.

Moreover, the Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies

Comment 125: *The DEIS must discuss the relative benefits of regenerative agricultural methods in future plans for the irrigated former sugar lands. Examples would be: rotational grazing; extensive cover cropping; contour plowing and water collection swales (see MTF "Mālama `Āina report referenced earlier). The DEIS cannot conclude that "sustainability" will be achieved by using the same outmoded methods that lead to past chronic water shortages and lost soil health.*

Response 125: The Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies. Once crops are planted (particularly the permanent orchard crops), ground disturbance will be a limited, resulting in a further reduction of dust and erosion, thus reducing runoff. In addition, the Water Lease terms and conditions will require farm tenants to follow BMPs. These practices may include, but are not limited to, rotational grazing, use of cover crops, contour plowing, and use of swales. Also, please note that sugarcane farming methods are not applicable to those used for diversified agriculture. Moreover, as noted in Response #1 above that Mahi Pono plans to invest over \$20 million to increase the efficiency of its on-farm irrigation system in Central Maui (i.e., the distribution system from the Kamole-Weir to the agricultural fields). Mahi Pono's irrigation engineering team is also designing a high-efficiency irrigation system. The new irrigation system will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycle and re-use all water used in Mahi Pono's processing plants; and (3) integrate various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown page 2-25.

Comment 126: *The current set of Alternatives examined in the DEIS is extremely lacking. Dismissal of alternatives was done without factual information. The discussion of Alternatives*

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must provide sufficient information for the reader to gain a good understanding of why particular alternatives are rejected. HAR 11-200-16 requires that:

“The draft EIS shall describe in a separate and distinct section alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks.”

Unfortunately, none of the 3 Alternatives considered; or the 3 Alternatives dismissed, were explored with enough rigor or objectivity to meet this standard of evaluation.

Response 126: We respectfully disagree with your opinion that the alternatives analysis is lacking. The relevant section of the law is HAR § 11-200-17(f), as cited in Chapter 3 (Alternatives) of the Draft EIS. HAR §11-200-17(f) requires an analysis of alternatives to the Proposed Action "*which could attain the objectives of the action.*" The objectives of the Proposed Action, as stated in Section 1.2 of the Draft EIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku. Importantly, HAR § 11-200-17(f) requires a comparative evaluation of the environmental benefits, costs, and risks of the Proposed Action and each reasonable alternative. As noted in Response #15 above, Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued.

Chapter 3 of the Draft EIS also identified other alternatives that could meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects, and therefore those alternatives were discussed, but ultimately not assessed to the same degree as (a) through (d). Nevertheless, in response to comments submitted on the Draft EIS, a further exploration of those alternatives was undertaken and is provided within Chapter 3. Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible.

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Chapter 3 of the Draft EIS includes a comparative evaluation of the environmental "benefits, costs, and risks" of the Proposed Water Lease and "each reasonable alternative" i.e. (a) through (d) across a spectrum of environmental factors, such as Soils, Surface Waters and Aquatic Environment, Groundwater, Coastal Waters, Drainage, Natural Hazards, Flora, Fauna, and Invertebrates, Historic Resources, Cultural Resources and Practices Social Characteristics, Economic and Fiscal Resources, Agricultural and Related Economic Resources Recreational Resources, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Water Systems, and Public Services and Facilities. However, please note that Section 3.5 of the Final EIS includes a comparative table of the various alternatives and the associated impacts of each alternative as shown on pages 3-49 to 3-80.

Comment 127: *The DEIS needs to disclose impacts of continued large scale diversions in the event of climate change, and provide strategies for the EMI system to respond to changes in rainfall patterns. There also needs to be a discussion of funding needed to increase resiliency and increase the capacity of the East Maui watersheds to store and release surface and ground water that will continue to supply the EMI system during changing weather events. The continued mass dewatering of streams will have impacts if rainfall patterns change; the impact of this must also be discussed.*

Response 127: Climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of

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this EIS as shown on pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Your comment regarding about the EMI Aqueduct System responding to changes in rainfall patterns is unclear. However, please note that the EMI Aqueduct System must meet the respective IIFS of the License Area streams prior to diverting any surface water through the EMI Aqueduct System.

Regarding your comment about funding needed to increase resiliency, as discussed in Response #69, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses a budget with potential sources of funding for implementing the actions of the watershed management plan which must also have adaptive management.

Comment 128: *The DEIS needs to discuss impacts of proposed large-scale diversions on aesthetic resources. Examples include the dry and diminished appearance of streams, pools and waterfalls enjoyed by the public during hiking and nature study and by local residents in areas like Ho‘olawa, Hanawana, Mokuapapa and Waipio.*

Response 128: Please note that potential impacts of the Proposed Action to visual resources are discussed in Section 4.9 of the Draft EIS. Regarding the East Maui region, Section 4.9 concludes that, “[n]o significant impacts on visual resources in the region are anticipated because no new construction or land alteration is planned for the License Area.” However, Section 4.9 also acknowledges that “in the short-term, measuring from the current time, where diversions are lower due to the lack of agricultural activity in Central Maui, against the time when Mahi Pono's diversified agriculture needs begin to use the maximum amount of water permitted, there will be a decrease in stream flows and waterfalls that can be viewed along Hāna Highway.” Section 4.9 further explains that the “expected decrease from the current baseline must be considered in a historical context as well: the impacts to such visual resources under the Proposed Action will be far less than the impacts over the years of sugarcane operations when vastly more water was diverted from East Maui than is planned under the Proposed Action.” However, please note that Section 4.9 of the Final EIS has been expanded to further discuss scenic vistas, cascading waterfalls, and stream flow as shown on pages 4-311 to 4-312.

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Moreover, Section 3.4.15 of the Draft EIS Section 3.4.15 analyzes the potential for the alternatives to the Proposed Action to impact visual resources in East Maui, Upcountry Maui and Central Maui. With respect to East Maui and Upcountry Maui, Section 3.4.15 reaches conclusions substantially similar to those of the Proposed Action. With respect to Central Maui, Section 3.4.15 concludes that there may be adverse impacts to visual resources in Central Maui under the No Action alternative, the Reduced Water alternative and the Alternative Lease Duration alternative to the extent that those alternatives may limit the extent to which Mahi Pono can implement its farm plan. Limitations on the implementation of the farm plan would result in less open green space in Central Maui.

Regarding the specific areas mentioned above in Comment #128 (Ho‘olawa, Hanawana, Mokuapapa and Waipi‘o), please note that there is expected to be no change from existing conditions in terms of visual resources as these streams through these areas are expected to be diverted as they have been in past under the Proposed Action.

Comment 129: *Current EMI use of the lease area limits public use and enjoyment of public lands, as noted in comments from DLNR lands division and Na Ala Hele. The proposed lease area also includes streams that are part of recreation use at such facilities as the Garden of Eden arboretum, Twin Falls Community and Camp Ke‘anae. Recreational use of many streams in the lease area, especially in local neighborhoods such as Hanawana, Hoolawa, Mokuapapa, Honokala, Honopou and Huelo is already significantly impacted under the former lease conditions. The proposed diversions will continue those impacts and need to be discussed in the EIS.*

Response 129: The discussion in Section 4.8 has been expanded in the Final EIS to include the Garden of Eden Arboretum and the YMCA Camp Ke‘anae as shown on pages 4-305 to 4-309.

Twin Falls was discussed in the Draft EIS in Section 4.8 stating:

“Twin Falls is partially within the License Area. The upper falls are within the License Area but the area that is frequently visited is outside the License Area. It is noted that participants in the SIA noted that the Twin Falls trails and other area trails are subject to overgrown landscaping and flash flood conditions.”

A discussion regarding the streams mentioned in Comment #129 has been added to in Section 4.8 (Recreational Uses and Park Facilities) of the Final EIS as shown on pages 4-305 to 4-309.

Moreover, in focus groups and interviews conducted for the SIA, community access and use of the overall watershed area were raised by participants. In response to Draft EIS comments, the SIA has been revised to include Section 5.3.1.3, Community Use and Access to Water Collection Area which is reflected in Section 4.8 as shown on pages 4-305 to 4-309. This section identifies Nā Ala Hele trails in the Collection Area, reported community use of this area, including hiking

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and hunting, summarizes community interest in accessing this area to observe the EMI Aqueduct System, and outlines the process for obtaining access to the License Area.

Comment 130: *The DEIS needs to discuss removal of decades worth of debris and waste from ditch system maintenance that has been left to clutter the natural features of the lease area.*

Response 130: Regarding your comment above, please note that EMI has established standard operating procedures to address the cleanup of trash and debris during the course of its activities. EMI has in place a practice of removing any equipment and excess materials it brings into the License Area to perform work on the EMI Aqueduct System as soon as the job(s) is completed. In addition, employees look out for unnecessary debris in the field during routine maintenance tasks and when unused items are observed from previous field work, EMI has conducted specific identification and removal operations. Of note, smaller portions of the EMI Aqueduct System have been misinterpreted by some to be unused ‘debris’ when in fact they do serve an operating function.

Comment 131: *If stream water is used for central Maui development, there will be a cumulative impact on public facilities and services that must be considered. A&B has “provided” stream water allotments to Maui County in the past to secure additional water meters for developments on A&B’s own former agricultural lands (such as Haiku Hill, Haiku Makai). The full range of potential development impacts resulting from this type of water allotment should be discussed.*

Response 131: The only development within Central Maui contemplated in connection with the proposed Water Lease is the continued re-development and re-establishment of agriculture on approximately 30,000 acres of agricultural fields that used to be in sugarcane and are now planned and being used for diversified agriculture. The proposed Water Lease does not entail the development of residential subdivisions (like Haiku Hill or Haiku Makai) in the Central Maui agricultural fields. It is expected that the Water Lease will authorize specific character of use for the leased water and any use that is outside of that authorization would not be permitted.

Comment 132: *The EIS needs to discuss the potential for and cumulative effects of A&B and/or Mahi Pono having access to millions of gallons of water to use for development if Ag operations fail to be profitable.*

Response 132: Such a discussion is beyond the scope of the EIS. The only development within Central Maui contemplated in connection with the proposed Water Lease is the continued re-development and re-establishment of agriculture on approximately 30,000 acres of agricultural fields that used to be in sugarcane and are now planned and being used for diversified agriculture. It is expected that the Water Lease will authorize specific character of use for the leased water and any use that is outside of that authorization would not be permitted. Please also see Responses #30 and #131.

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Comment 133: *The DEIS needs to provide information on every stream in the lease area, including the amount of water that is diverted or planned to be diverted, from each section of each stream, from each stream as a whole, from each license area, and from all licensed areas as a whole.*

Response 133: EMI has gauges located in several locations across the License Area. These gauges measure the flow in the ditches only. It is not feasible to measure flow in the streams, as there are limited areas that contain the necessary control points to accurately measure streamflow. Similarly, it is not feasible to provide total diversion amounts by a particular portion of the proposed License Area, i.e. diversions amounts only from Huelo, diversion amounts only from Nahiku, etc. The USGS used to have gauges at each of the License Area boundaries. Those gauges were not on individual streams, they were in the ditches at each license area boundary. However, due to USGS cost cutting, several of those gauges were removed. It is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gages to wash away. EMI has never conducted stream gauging as that lays within the expertise the CWRM and the USGS. As noted in the CWRM D&O, the measurements EMI take are at Honopou Stream and Maliko Gulch, however, for the purpose of measuring the aggregate flow from entire License Area, the Honopou Stream measurement reading was used.

As discussed in Draft EIS Section 2.1.2 (East Maui/License Area) and 2.1.4 (Central Maui Field System), the long-term average delivery of water by the EMI Aqueduct System up until 1986 had been approximately 165 mgd (prior to any use of water by the MDWS or HC&S on the agricultural fields). This measurement was taken at Māliko Gulch. As discussed in Section 2.1.2 of the Draft EIS, the amount of water that could be diverted from the License Area under the Proposed Action is approximately 87.95 mgd.

Comment 134: *Aquifers from Nahiku to Ke'anae are believed to be fully saturated, with no separated levels between the Kula and Honomanū basalt layers. (Gingerich, 1998). This implication and the deep connection between surface and ground water in a "saturated" aquifer needs to be discussed in the EIS. It should also acknowledge that diversions over the last century have had significant impacts on the aquifers and watershed health, which continue to progress; the DEIS needs to discuss the impact associated with cause a resumption of diversions.*

Response 134: Regarding your comment on the connection between surface and groundwater in a saturated aquifer, please note that an aquifer is generally considered as an area which is saturated with water. Any part of the saturated zone that is underground is considered groundwater. When the saturated zone breaks the surface, that is where streams and surface water occur. Surface water and groundwater can occur within the same aquifer.

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Regarding your comment about the diversion's impact on aquifers and watershed health, please note that the effects of the diversions are uncertain since the diversions have been occurring for over a century and pre-diversion data does not exist. However, it can be noted that the sustainable yield (SY) for the entire island of Maui has decreased over the years, including the Ko'olau Aquifer Sector. By comparing the CWRM's 1987, 2008 and 2018 maps of SY for the island of Maui, it shows an overall decrease of 25 mgd from 452 mgd (1987) to 427 mgd (2008), then a decrease of 70 mgd from 427 mgd (2008) to 357 mgd (2018) for the entire island of Maui. Specifically, the Ko'olau Aquifer Sector, where the License Area is situated, similarly also shows a decrease in SY from 186 mgd (1987) to 175 mgd (2008) then to 152 mgd (2018).

In order to determine SY, the CWRM assesses the groundwater recharge and takes into account ground and surface water users as well as the regions' ecosystems dependency on the source. SY changes over time due to changes in climates, rates of recharge, groundwater surface water interactions, land use, etc. When presented with insufficient data, estimations are made based on SY models. As updated data becomes available, the CWRM periodically reviews and updates the SY estimates.

Hence, it can be noted that the SY for the Ko'olau Aquifer Sector has seen a decreasing trend over the years. However, there is no evidence this decrease is directly related to the EMI Aqueduct System and its diversion of stream flows since a variety of factors go into computing the SY. In fact, as indicated in Section 4.7.4 of the Draft EIS, the EMI Aqueduct System diverted less water in the period from 2008 to 2013 (referred to in the EIS as a period of Recent Sugarcane Cultivation), and even less water has been diverted from 2016 to the present. This should mean that the amount of water available for recharge of the aquifers underlying the License Area was greater during these periods. Yet the SY of the Koolau Aquifer Sector continued to decrease. Section 4.2.2 of the Final EIS has been revised to discuss the above, as shown on page 4-69.

Comment 135: *Existing and ongoing impacts to our coastal waters and fisheries need to also be discussed in the DEIS. It should also be acknowledged that East Maui diversions over the last century have had significant impacts on coastal waters and fisheries, not just on Maui, but throughout the Hawaiian Islands; the proposed lease would cause a resumption of those impacts, and those impacts need to be discussed.*

Response 135: Please note as discussed above in Response #60 that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream delivered nutrients to nearshore marine habitats. The collected data presented in Appendix B and summarized in Section 4.2.3 of the EIS suggest that the

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nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, because the nutrient concentrations in the ocean do not change substantially due to stream diversions as proposed under the Water Lease, there is no pathway for fishing to be negatively impacted. Moreover, please note that it is not scientifically possible to fully document impacts that first took place more than a century ago, for East Maui and the Hawaiian Islands.

Comment 136: *Significant native plant communities are found above Puohakamoa, Waikamoi, Haipuaena. Impacts of maintenance equipment bringing in invasive species needs to be discussed and mitigated.*

Response 136: We acknowledge your comments above. Please note that Section 4.4 of the Draft EIS discussed avoidance and minimization measures to reduce to impact of the Proposed Action, which includes maintenance and repair activities. Moreover, please note that these measures have been revised and expanded upon in the Final EIS as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131. However, please note that Puohakamoa and Waikamoi streams are in the Huelo portion of the License Area and subject to the CWRM D&O, and Haipuaena stream is in the Honomanu portion of the License Area and is also subject to the CWRM D&O. Hence, it is expected that the surrounding environment will benefit from the restored flows.

Comment 137: *Impacts on endangered fauna and flora (plants and avian species) need to be discussed in the EIS, as well as impacts on existing native stream life resources and anticipated impacts on all native stream life species used for traditional practices. We concur with USFWS comments, which should be used to formulate content of the DEIS.*

Response 137: Please note that impacts to endangered flora and fauna, including plants and avian species, are discussed in Appendix C and Section 4.4. of the Draft EIS. Please note that Section 4.4.1 of the Draft EIS lists 18 plant species with designated critical habitat within the License Area. However, Section 4.4.1 of the Final EIS has been revised to include plants species with critical habitat as recognized by the USFWS as shown on pages 4-114 to 4-117. Appendix C and Section 4.4.1 of the EIS conclude that there are no anticipated adverse impacts to flora resources in East Maui from the Proposed Action. The Water Lease does not require vegetation removal except for routine maintenance purposes, therefore the amount of each vegetation cover type currently present would remain substantially the same. SWCA determined that the continued diversion of water through the EMI Aqueduct System would not have impacts on terrestrial flora species. Recommended mitigation measures associated with maintenance activities undertaken in the License Area are proposed in the Draft EIS and have been revised and expanded upon in the Final EIS as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131.

Endangered avian species with the potential to occur in the License Area are noted Section 4.4.2 and Table 4-5 of the Draft EIS. Moreover, three endemic (native) avifauna—'apapane (*Himatione sanguinea*), Hawai'i amakihi (*Chlorodrepanis cinea*), and I'iwi (*Drepanis coccinea*)

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—were found during ground surveys of the License Area, one of which (the 'i'iwi), is federally listed as threatened. Due to the low level of activity that may take place in the License Area, no significant impacts to avian species are expected. It is acknowledged that the presence of vehicles and humans for maintenance activities could disrupt the normal behavior of wildlife and temporarily displace individuals from roadside habitat, but such activities are expected to be very infrequent and therefore any disruption to wildlife would have limited effect. Nevertheless, proposed mitigation measures are provided in Section 4.4.2 of the Draft EIS which have been revised and expanded upon in the Final EIS as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131. Moreover, please note that the discussion of avian malaria has also been added to Section 4.4.2 of the Final EIS as shown on pages 4-126 to 4-131.

Regarding impacts to native stream life used for traditional practices, the CIA included in Appendix F and summarized in Section 4.6 of the EIS identified impacts to the regional environment, taro farming, and freshwater ecosystems based on consultation with the community. Please note as discussed in Section 4.6 of the Draft EIS, several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water, although those concerns were expressed prior to the issuance of the CWRM D&O. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo 'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; *Neritina graposa*), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as 'o'opu) or continue to grow in the ocean. Specifically, Section 4.6 states:

4. *Jonah Jacintho states in his 2014 declaration that due to a lack of stream flow, fish populations have decreased therefore he cannot fish as much. To increase the population of ocean fish, fresh water is integral for spawning and nutrients. He also added that more water in stream beds would also increase 'o'opu, prawn, and hīhīwai populations.*
5. *In Lezley Jacintho's 2014 declaration, she states that due to lack of stream flows, her kalo production has declined due to root rot and other diseases. She adds that stream flow output is also important in the spawning of different species of fish. The lack of stream flow affects her gathering rights as a Native Hawaiian and her 'ohana (family). Native species such as 'o'opu needs fresh water to travel back upstream, which compromises their reproduction. Fish, hīhīwai, 'ōpae, and 'o'opu populations are also scarce and many families cannot gather these resources causing them to move away. Another concern Ms. Jacintho voiced is stagnate water, which causes leptospirosis and other bacteria...*

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10. In Earl Smith, Sr.'s 2014 declaration, he states that he recalls gathering 'ōpae, hīhīwai, and 'o'opu from Hanawī, Makapīpī, and One'o Streams. He can only find these species in Hanawī Stream. Near the coast, he would fish for moi (threadfish; *Polydactylus sexfilis*), aholehole (Hawaiian flagtail; *Kuhlia sandvicensis*), manini (reef surgeonfish; *Acanthurus triostegus*), and enenuē (chub; *Kyphosus bigibbus*) but has noticed a depletion of fish. He attributes this to a lack of stream flow that empties in the ocean.
11. In Edward Wendt's 2014 declaration, he states that he gathers and fishes in the streams to provide a protein source for his family, neighbors, and kūpuna (elders) who may be unable to gather for themselves. He also enjoys teaching traditional fishing practices and values to students. However, due to the lack of adequate stream flow, Mr. Wendt is unable to teach students how to mālama (to take care of) streams, fish, and gather. The diminished stream flow has negatively impacted the muliwai, fisheries, and his lo'i kalo. Invasive species such as the apple snail and African tulip tree have infringed his lo'i kalo.

Relating to the impacts mitigations presented in Section 4.6 of the Draft EIS:

*Impact: Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; *Neritina graposa*), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision.*

CSH Recommendation: It is recommended that a biologist or similar qualified professional provide an assessment of the impacts of water diversion to

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indigenous freshwater species ('ōpae, 'o'opu, and hīhīwai) within the License Area. The application of the CWRM D&O has the potential to reduce or eliminate this cultural impact. Nine of the streams mentioned by community participants where this impact is identified have been fully restored in accordance with the CWRM D&O. These include Honopou (Puniawa Tributary), Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Makapipi, Waiohue, Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), and West Wailuāiki Streams.

Trutta and SWCA prepared reports in support of the DEIS assessing the impacts of the Proposed Action, particularly impacts on indigenous freshwater species, and terrestrial flora and fauna. The impacts of the Proposed Action to freshwater species are discussed in Section 4.2.1 and the impacts to terrestrial flora and fauna are discussed in Sections 4.4.1 and 4.4.2. Moreover, the two reports are appended to the DEIS (See Appendix A and Appendix C).

Please note that the CIA, has been further updated based upon comments received during the public comment period on the Draft EIS. The applicable revisions to the CIA are summarized in Section 4.6 of the Final EIS, as shown on pages 4-239 to 4-252.

Moreover, please note that the HSHEP model included the report in Appendix A which is summarized in Section 4.2.1 of the EIS found that under the Proposed Action the habitat for species such as 'ōpae, 'o'opu, and hīhīwai would increase from what was available under historic diversion rates.

Comment 138: *Previous and ongoing impacts to archaeological resources such as lo'i, 'auwai and house sites in the lease areas need to be fully documented. The EIS needs to discuss the fact that these types of impacts can be expected to continue if the proposed lease is granted.*

Response 138: As discussed in Response #84, in consultation with SHPD, an archaeological LRFI report was prepared to determine the likelihood that historic properties (any building, structure, object, district, area, or site over 50 years old) may be affected by the proposed Water Lease and, based on findings, consider cultural resource management recommendations. The LRFI included an analysis of the natural and built environment of the License Area, a comprehensive review of traditional and historic background information of the region, a review of previous archaeological studies and findings in the region, and a field inspection of the License Area focused on inspecting the areas nearest to the EMI Aqueduct System infrastructure and access roads.

Appendix E (the LRFI report) of the Draft EIS recites that the Māhele records for the East Maui region contain claims for terrestrial agricultural features such as lo'i (irrigated kalo terraces), pākanu (garden, planting enclosure), 'auwai (artificial irrigation canals, used to feed lo'i), kula

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(fields, open pasture), pali (cliff, precipice, or steep hill suitable for cultivation of select plants), kīhāpai (small cultivated patch or orchard), mo‘o (ridge for similar purpose as pali), and pō‘alima (small agricultural patches tended in traditional times solely for chiefly tribute), and also notes that there are kuleanas claimed for their naturally occurring vegetation and the right of tenants to collect these resources, such as ‘ie (aerial roots of the ‘ie‘ie vine, used in plaiting, basketry, and wicker weaving), olonā (shrub with fibrous bark used in fishnets, baskets, and to construct tī leaf raincoats and capes), wauke (paper mulberry used in making tapa cloth), hala (pandanus tree) and wildy occurring kalo (taro) and sweet potato. The LRFI also discusses a May 1995 multidisciplinary cultural landscape study of Ke‘anae and Wailuanui that located certain habitation sites in the coastal region of Ke‘anae and Wailuanui, outside of the License Area.

Specifically, regarding your comment about lo‘i, ‘auwai, and house site, the CIA has been updated with follow-up interviews in response to comments on the Draft EIS and identifies impacts to the regional environment, taro farming, and freshwater ecosystems within the License Area based consultation with the community which are summarized in Section 4.6 of the Final EIS provided by pages 4-239 to 4-252 of the Final EIS which includes your notes from your interview with CSH that an increase in water supply will allow for an increase in agricultural activity, including taro farming.

Comment 139: *Hamakuapoko has cultural sites in A&B and/or Mahi Pono agricultural fields that need to be identified and protected; Hamakualoa also has cultural sites in the lease area lands that need to have proper recording and protection. Old ditch structures such as the Spreckels Old Haiku ditch, are also deteriorating and drifting downstream in chunks. Impacts to all of these sites and structures, and impacts to the gathering and cultivation of traditional crops need to be addressed in the DEIS. This needs to include a discussion of impacts in areas where no restoration is being proposed, such as the Hanawana and Kailua areas, Waipio and Waipio Iki, Hoolawa, Honokala, Makapipi and Mokupapa.*

Response 139: Regarding your comments about Hāmākuapoko having cultural sites in the Mahi Pono agricultural fields in Central Maui, the proposed agricultural use by Mahi Pono in Central Maui will be confined to existing agricultural fields that, prior to the end of sugar production in 2016, were continuously plowed for more than a century. Additional plowing within an established agricultural plow zone will not pose a new or increased impact to historic properties any more so than past agricultural plowing.

Mahi Pono’s farm plan for the Central Maui agricultural fields includes ground disturbance in agricultural zones that have been subject to the same type and extent of ground disturbance for more than a century. Hence, any cultural sites that may have once existed in the Central Maui agricultural fields have been destroyed. However, the LRFI recommends consultation with the SHPD in the event that agricultural use in Central Maui is proposed for areas outside of established agricultural zones or for projects that would involve ground disturbance beneath the agricultural plow zone.

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Regarding your comment that Hāmākualoa has cultural site in the License Area that need to have proper recording and protection, please note as discussed in pages 4-154 to 4-155, agricultural activities will not take place outside the existing agricultural fields or plow zone. Moreover, we note that in your interview with CSH, which took place after publication of the Draft EIS, you did not identify any of these site that you refer to in this comment letter.

Your comments that chunks of the old ditch system are deteriorating and drifting downstream are acknowledged. However, it is unclear specifically what portion of the EMI Aqueduct System you are referring to, as the old ditches are many miles in length. EMI staff continually perform repair and maintenance activities for the EMI Aqueduct System and are unaware of the specific instance you reference.

Regarding your comments about impacts to sites and structures, gathering and cultivation of traditional crops, CSH contacted you for additional consultation on the Papanene Heiau in Central Maui. Additional information regarding this heiau has been included in the updated LRFI and is discussed in Section 4.5 of the Final EIS. See pages 4-154 to 4-155.

The CIA was summarized in Section 4.6 of the Draft EIS:

Based on information gathered from the cultural and historical background, and the community consultation, significant cultural resources were identified within the License Area, as well as outside of the License Area. It should be acknowledged that although some of the impacted cultural resources exist outside of the License Area, what takes place within the License Area directly affects these cultural practices and resources. At present, there is documentation and testimony indicating traditional and customary Native Hawaiian rights are currently being exercised within the License Area. Cultural resources, practices, and beliefs were identified as currently existing within the License Area. In addition, East Maui, which includes the License Area and beyond the License Area, maintains a rich subsistence and cultural history.

However, the CIA has been updated pursuant to post-Draft EIS consultation, as reflected in Section 4.6 of the Final EIS, including discussion regarding impacts to the regional environment, taro farming, freshwater ecosystem and cultural sites as well as recommendations to mitigate those potential impacts based on other consultant studies and community consultation as shown on pages 4-239 to 4-252.

Regarding your comment that the EIS needs to include a discussion of impacts in the area where no restoration is being proposed, such as the Hanawana and Kailua areas, Waipio and Waipio Iki, Hoolawa, Honokala, Makapipi and Mokupapa please note that Table 4-13 to 4-15 has been added to Section 4.6 of the Final EIS as shown on pages 4-171 to 4-239 which identifies cultural

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practices on a stream-by-stream basis in response to comments fielded during the Draft EIS by CSH.

Comment 140: *The DEIS needs to use Kepa Maly's East Maui study as part of the Cultural Impact Assessment.*

Response 140: Your comment lacks specificity on which Maly study you are referring to. However, the following resources were consulted in conjunction with the preparation of the Archaeological Literature Review and Field Inspection (Appendix E) and the Cultural Impact Assessment (Appendix F):

Maly, Kepā, and Onaona Maly

2001 *Volume I Wai o ke Ola: He Wahi Mo'olelo no Maui Hikina: A Collection of Native Traditions and Historical Accounts of the Lands of Hāmākua Poko, Hāmākua Loa and Ko'olau, Maui Hikina (East Maui), Island of Maui*. Kumu Pono Associates, Hilo, Hawai'i.

2006 *He Mo'olelo No Maui Hikina - Kalialinui I Uka A Me Nā 'Āina O Lalo: A Cultural Historical Study of East Maui - The Uplands of Kalialinui, and the Lands that Lie Below, Island of Maui "The Waikamoi Preserve"*. Kumu Pono Associates, Hilo, Hawai'i.

Comment 141: *Cumulative Socio-Economic impacts of A&B controlling use of such a large amount of water for 30 years, as proposed, must also be discussed in the EIS.*

Response 141: The socio-economic impacts of the Proposed Action are addressed at length in Section 4.7 of the Draft EIS, and in further detail in Appendices G through I (Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report). Draft EIS Section 4.7 has subsections addressing impacts to populations and impacts (Section 4.7.1), impacts to social characteristics (Section 4.7.2), impacts to the economy and other fiscal considerations (4.7.3), and impacts to the agricultural economy. (4.7.4). The potential socio-economic impacts of the alternatives to the Proposed Action considered by the Draft EIS are analyzed in Section 3.4.11 (Social Characteristics), 3.4.12 (Economic and Fiscal Resources), and 3.4.13 (Agricultural and Related Economic Resources). The Draft EIS thoroughly addressed cumulative socio-economic impacts in Section 4.17. That discussion has been further supplemented by updates in the Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report as shown on pages 4-331 to 4-336.

Comment 142: *The EIS needs to discuss abandonment of ditch structures on permanently restored streams and what happens to diverted water on streams while they await "permanent restoration."*

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Response 142: Upon making the voluntary commitment to permanently restore the stream flows in the “taro streams”, EMI returned approximately 90-95% of the natural flow of the streams— all that could be done by adjusting (opening or closing) the diversion gates. The final 5-10% to achieve complete restoration requires modifications to diversions, essentially construction projects, thus triggering various permitting processes that continue to be pursued.

Potential impacts from the abandonment of structures and equipment as it relates to native stream habitat was assessed and discussed in Appendix A, the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report.

The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

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However, please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals.

Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

The two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped.

Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts.

Th above is discussed in more detail in Section 4.2.1 of the Final EIS as shown on pages 4-61 to 4-62 and on pages 4-63 to 4-67 of the Final EIS.

Comment 143: *It also needs to discuss the effect of diversion design and its impact on native streamlife migration, as well as the impacts/benefits of permanently removing all ditch structures on the permanently restored streams.*

Response 143: Diversions come in many different shapes and designs, as discussed in the Historic Structure Assessment provided as Appendix D of the Draft EIS. CWRM will be looking at how specific diversions should be modified in the course of overseeing the implementation of its CWRM D&O, as the treatment of diversion structures is a matter that was addressed by

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CWRM in the D&O for the Interim Instream Flow Standards (IIFS) proceedings on the East Maui streams. CWRM ordered in relevant part:

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

See CWRM D&O at p. 269.

Please note that the diversions closer to the stream mouth have more impact than those farther from the stream mouth, some designs can entrain larvae or block passage more than other designs, and the amount of water passing is also important when quantifying impacts. The *Assessment of the Environmental Impact of Stream Diversions on 33 East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model* (May 27, 2019) prepared by Trutta Environmental Solutions, Inc. addresses all of these factors on a diversion by diversion basis. Hence, in summary, addressing the impacts of diversion design will need to be done on a case-by-case basis with the CWRM. However, please note that Section 4.2.1 of the Final EIS has been updated to include the above and discuss diversion impacts and mitigations measures in more detail as shown on pages 4-63 to 4-67.

Regarding your comment about the impacts/benefits of permanently removing all ditch structures on the permanently restored streams, please note as discussed in Response #142 that complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts.

Comment 144: *In addition, there needs to be a discussion in the EIS of who controls the diversion structures, how any allowable streamflow amounts will be enforced, and the relationship that public access to the leased areas has on the likelihood of streamflow violations being reported.*

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Response 144: Diversions structures are controlled by the EMI staff that operate the EMI Aqueduct System.

Regarding streamflow enforcement, the current East Maui water revocable permits specify that quarterly reports to the BLNR are required. These reports are mandated to include a statement of compliance with the IIFS and identify the total amount of water being diverted from License Area measured at Honopou. It is expected, and the EIS takes into account, that compliance with the IIFS requirements under the CWRM D&O will also be required under the Proposed Action. In compliance with the CWRM D&O streamflow requirements, EMI has adjusted certain movable portions of gates to ensure that streamflow below the gates complies with the IIFS requirements. Compliance with the CWRM D&O IIFS requirements is always subject to CWRM staff verification.

Regarding public access, it is recognized that the License Area could be smaller for the proposed Water Lease than the 33,000 acres of State-land that has historically been the subject of the water lease and/or revocable permits for East Maui surface water. BLNR, under the terms of the revocable permits in effect as of January 1, 2020, removed the Hanawi Natural Area Reserve, consisting of approximately 7,500 acres, from the land area encumbered by the revocable permits which has been reflected in the various figures depicting the License Area in the Final EIS. DLNR-DOFAW has expressed a desire to further reduce the License Area by removing portions of the Ko'olau Forest Reserve that are not managed by A&B/EMI or that A&B/EMI does not need to operate, maintain and repair the EMI Aqueduct System. It is assumed that the management of public access to those lands would fall on a State Agency as discussed in Section 3.2.2.2 of the Draft EIS. However, due to concerns about public safety, including safety from risks from stream flooding and risks related to the EMI Aqueduct System, it is not anticipated that DLNR would authorize unfettered public access to the EMI Aqueduct System, and therefore it is not anticipated that members of the public would be in a position to report "streamflow violations." Section Section 3.2.2.2 has been expanded in the Final EIS to further take into account a modified License Area. See pages 3-21 to 3-24 of the Final EIS.

Comment 145: *Some DWS Kula Pipelines intakes appear to divert streams in the lease area. The intake for the Nahiku DWS supply is in the lease area. Community water systems for Huelo, Honopou, Ho'olawa, and Waipio residents are in the lease area. What happens there in the lease area affects many potable water users; this should be discussed in EIS.*

Response 145: The presence of MDWS "Kula pipelines" is recognized in the Draft EIS. Figure 2-4 depicts the Upcountry Maui Water System and shows MDWS infrastructure, such as the Upper and Lower Waikamoi Flumes, Olinda Water Treatment Plant, and Kula Pipeline, but none of these improvements are within the License Area. The Upper and Lower Waikamoi Flumes

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sourced and situated in the Ha'ikū Uka Watershed on privately owned land as discussed within Responses #6 and is not within the License Area.

Regarding your comment about the intake for the Nāhiku MDWS System, please note that this intake is not located within the License Area, it is on land owned by EMI. However, for more details regarding this system, please see Response #14 above.

Your comment regarding community water systems for Huelo, Honopou, Ho'olawa, and Waipi'o that you state are in the License Area is acknowledged. However, are unaware of any water systems within the License Area other than the EMI Aqueduct System.

The EIS recognizes that the Water Lease has the potential to affect many potable water users, as discussed in Appendix H and Appendix I of the EIS which are reflected in Chapter 3 and Chapter 4 of the EIS. Under the Proposed Action, potable water users would not experience any significant impacts. However, under the No Action alternative, or the Reduced Water Volume alternative, MDWS potable water users may experience significant increases in water costs or some users may even be left without a reliable source of potable water.

Comment 146: *The DEIS needs to include a discussion of impacts of utilizing water for any uses other than agriculture that are anticipated over the 30-year term of the proposed lease.*

Response 146: We respectfully disagree. An analysis of uses of diverted water in manners inconsistent with the proposed uses identified in the Draft EIS is beyond the scope of the EIS. The EIS was prepared to analyze the impacts of the Proposed Action and if the Proposed Action is approved (i.e. if the Water Lease is issued), that water would be used for agriculture and other uses discussed in the EIS. Presumably, any significant change to the use of the water authorized under a Water Lease issued based upon this EIS would require an additional or separate environmental analysis.

Comment 147: *The DEIS needs to provide details of plans to restore stream courses and watersheds in the lease area where diversions are being permanently abandoned and removed, as well as any positive and/or negative impacts of such restoration.*

Response 147: As noted in Response #143 above the potential impacts from the abandonment of structures and equipment as it relates to native stream habitat was assessed and discussed in Appendix A of the EIS. Moreover, the Proposed Action itself does not include any abandonment of diversion structures, except to the extent that the Proposed Action will be implemented in the context of the requirements of the CWRM D&O, which is separate and independent from the proposed Water Lease. The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the IIFS requirements under the CWRM D&O.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.² Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

² Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Mr. Earl Matsukawa
Wilson Okamoto Corp
1907 South Beretania St. Suite 400
Honolulu, HI 96826

November 07, 2019

Aloha Gentlemen;

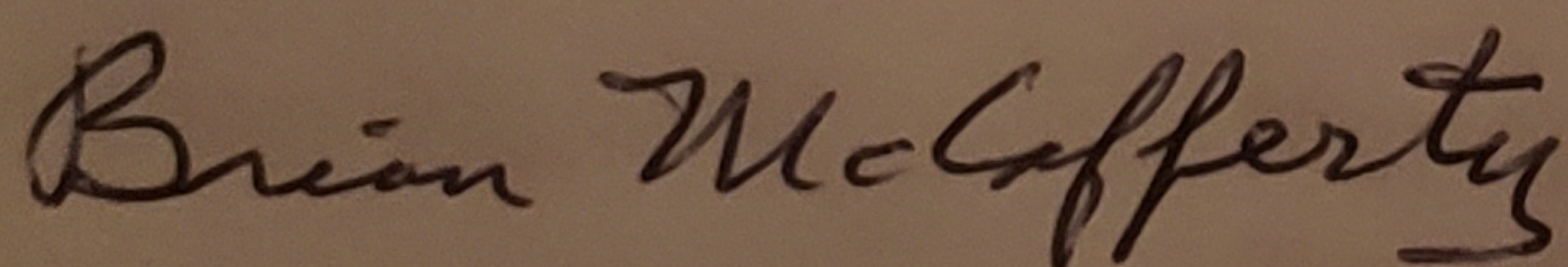
We would like to go on record as advocating for Alexander and Baldwin and Mahi Pono to obtain a water lease for a duration which will allow Mahi Pono to implement their farm plan.

This water lease will hopefully allow water diversion from East Maui in accordance with availability and previously agreed upon in stream flow standards. The duration we believe should be for at least 5 years to allow 'Bonafide performance' on Mahi Pono Farm Plan, with renewal options based upon performance.


We are a teen work skills training program since 1993, and have been allowed by Alexander & Baldwin (and now Mahi Pono), to draw up to 50,000 gallons daily for our 4 acre student operated organic garden, of which there is a photo attached. We actually draw about 5,000 gpd from the EMI Haiku Ditch for our garden. To our knowledge, EMI also allows taro farmers to also draw water from their ditches too.

Thank you, Mahalo, for this opportunity to testify on behalf of proposed water lease.

Sincerely,



Brian McCafferty Program Director
Cc Mr. Ian Hirokawa
Land Division, DLNR



TEENS ON CALL / TEENFORCE

Brian McCafferty
PO Box 792048
Pa'ia, Maui, HI 96779
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808-281-2154

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10238-04
September 3, 2021

Mr. Brian McCafferty
P.O. Box 792048
Paia, HI 96779
brian.teensoncall@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Brian McCafferty:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *We would like to go on record as advocating for Alexander and Baldwin and Mahi Pono to obtain a water lease for a duration which will allow Mahi Pono to implement their farm plan.*

Response 1: We acknowledge that you as a representative of the organization, Teens On Call, are supportive and advocate for the Proposed Action that would enable the Applicant to divert water and support the Mahi Pono farm plan.

Comment 2: *This water lease will hopefully allow water diversion from East Maui in accordance with availability and previously agreed upon in stream flow standards. The duration we believe should be for at least 5 years to allow ‘Bonafide performance’ on Mahi Pono Farm Plan, with renewal options based on performance.*

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Response 2: Please note that the Proposed Action, as discussed in Section 2.1 is the issuance of a long-term Water Lease (30 years) that would allow for the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for uses described in the EIS in compliance with the IIFS set by the CWRM D&O in June 2018. Specifically, as discussed in Section 2.1 of the Draft EIS:

Independent of the Proposed Action, on June 20, 2018, the CWRM issued its D&O setting IIFS for numerous streams and tributaries of streams in the License Area, which includes water originating and flowing from both State and privately owned lands within East Maui. The CWRM D&O establishes a quantity of water that must remain in each stream at specified locations. The CWRM D&O ordered full stream restoration for 10 streams and partial flow restoration on 12 additional streams (Please refer to Section 1.3.4). Therefore, the maximum amount of water that can be awarded through the Water Lease is what is available for diversion after the CWRM D&O is implemented. This is the premise of the Proposed Action.

With regards to your comment about the duration being five years, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability." The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation.

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As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Comment 3: *We are a teen work skills training program since 1993, and have been allowed by Alexander & Baldwin (and now Mahi Pono), to draw up to 50,000 gallons daily for our 4 acre student operated organic garden, of which there is a photo attached. We actually draw about 5,000 gpd from the EMI Haiku Ditch for our garden. To our knowledge, EMI also allows taro farmers to also draw water from their ditches too.*

Response 3: We acknowledge that Teens On Call is a teen work skills training program that have been allowed to draw up to 50,000 gallons (of which 5,000 comes from the Haiku Ditch) daily from A&B and now Mahi Pono for the organization's four acre student operated organic garden. Please note however, EMI does not allow kalo farmers to draw water from the EMI Aqueduct System directly.

Comment 4: *Thank you, Mahalo, for this opportunity to testify on behalf of proposed water lease.*

Response 4: We appreciate your interest and participation in this environmental review process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Haiku Community <haikucommunitypm@gmail.com>
Sent: Thursday, November 7, 2019 3:38 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Cc: Haiku Community
Subject: HCA request to submit DEIS comments
Attachments: HCA DEIS comments.doc

To: Alexander & Baldwin
C/O Wilson Okamoto Corporation

Attention: Mr. Earl Matsukawa

RE: Comments on the East Maui Water Leases Draft EIS

Dear Mr. Matsukawa,

Thank you for the opportunity to submit these comments on behalf of the Ha'iku Community Association. Please see the attached document for the official submittal from HCA.

Respectfully,
Maile Davis

--

With thanks,
Maile Davis

Haiku Community Association
Project Manager
808-385-3176

To: Alexander & Baldwin
C/O Wilson Okamoto Corporation

November 4, 2019

Attention: Mr. Earl Matsukawa

RE: Comments on the East Maui Water Leases Draft EIS

Dear Mr. Matsukawa,

Thank you for the opportunity to submit these comments on behalf of the Ha'iku Community Association. The Ha'iku Community Association (HCA) serves to educate and inform the citizens of the North Shore area of Maui, Hawaii about issues and activities of concern to our community. As we stated in our earlier request, we believe this DEIS should not have been issued missing key information like DHHL water needs and how they will be met. Nevertheless, we are submitting our comments on the content that is available in the DEIS.

Our members include residents of the area between Kailua Town and Maliko Gulch on the island of Maui. (96708 zip code.) Our members who live in the traditional communities of Ha'iku, Pauwela, Kui'aha, Kaupakalua, Ulumalu, Pe'ahi, Honopou, Ho'olawa, Mokupapa, Honokala, Waipio, Huelo, Puolua, Hanawana and Kailua, are directly affected by the EMI diversions of streams in their neighborhoods. Our members living between Honopou Stream and Kailua Stream are directly downstream of the proposed Huelo section of the state lease area being discussed in the Draft EIS and are greatly affected by decisions being made by EMI /A&B and Mahi Pono regarding water diverted from the various streams; maintenance of the various ditch systems, and management of the diversions, stream channels and watershed areas.

Our comments reflect the areas of the DEIS where needed information has been omitted or information provided is incorrect or does not meet the intent of our Hawaii environmental review process that is clearly stated in 11-200-16 HAR:

§11-200-16 HAR Content requirements. The environmental impact statement shall contain an explanation of the environmental consequences of the proposed action. The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, a statement shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

- While the EIS needs to “fully declare the environmental implications of the proposed action,” instead it often relies on unsupported assumptions that the proposed action will have no impacts, and the few impacts it might present can be mitigated, with no real adjustment in the amount of water diverted, the length of the lease or the modification of the diversion systems.

HCA Members and supporters will be directly impacted by the preferred Alternative 1

The DEIS preferred Alternative 1: a 30 year lease for 33,000 acres of state land and a continuation of the EMI diversion practices of the past 140 years, will have substantial impacts on our members and supporters who live in Ha'iku and East Maui. This information is not included in the DEIS.

The DEIS concludes that there ARE NO IMPACTS of Alternative 1.

HCA believes the the EIS needs to discuss impacts to:

- Upcountry residents, businesses, farmers and Hawaiian cultural users in the Ha'iku area;
- the protected rights of DHHL beneficiaries Upcountry, East Maui and Central Maui;
- the health and safety of East Maui residents, businesses, farmers and Hawaiian cultural users;
- native stream life and ecosystems and to archaeological sites, marine species and traditional native Hawaiian cultural practices.

The DEIS also concludes, without much supporting information, that diverting less East Maui stream water; having greater public access to public lands, having a shorter lease period or having no lease would have many impacts and the loss of many benefits to Upcountry and central Maui residents and businesses.

The DEIS relies on incomplete or selective information to reach this conclusion.

Our members and supporters have come to public hearings, submitted comments on the EISPN and filed declarations as part of the Water Commission's Instream Flow Standards contested case. The DEIS has evidence of these concerns on the effects of continued diversions on streams not covered by the IIFS decision. These concerns are found in Appendix F (Cultural Impact Assessment) AND APPENDICES K, L & M (Scoping meeting transcripts) but the EIS concludes that the proposed continuation of the diversions will have no impacts on traditional and customary uses or native Hawaiian cultural users in East Maui, Upcountry or Central Maui, as long as the IIFS standards are met.

Because the DEIS does not include required information, but relies on a selective set of data, it fails to "fully declare the environmental implications of the proposed action."

MPACTS TO DHHL LANDS AND BENEFICIARIES

- The current DEIS contains no specific information regarding the water reservation amounts from the East Maui lease area needed by DHHL. **This information is now available and was publicly offered by DHHL staff at the Oct 9, 2019 BLNR meeting.** These specific legally protected water reservations should be INCLUDED in the DEIS, and Mahi Pono water use plans adjusted accordingly to reflect this amount, in order for the public and agency comment process to be based upon accurate information. A discussion of whether it is legal for A&B /Mahi Pono to assume that the DHHL "water reservation" can be utilized by Mahi Pono until it

is “needed by DHHL” should also be included in the DEIS. It is our understanding that the Waiola o Molokai vs DHHL case dealt with a similar situation, and the DHHL prevailed.

IMPACTS TO RESIDENTS & TRADITIONAL HAWAIIAN USERS OF HUELO LEASE AREA

The DEIS needs to fully declare the environmental implications of the proposed Alternative 1:

- **On the twelve streams in the Huelo lease area that have never undergone evaluation or study for amended IIFS.** Hundreds of families live along these streams directly below the state lease lands and have no public source of drinking or irrigation water. They depend upon the streams. Only 3 of 17 streams in the Huelo lease area were fully restored under the 2018 CWRM decision. These three streams can not satisfy all the water needs of the entire region of over 1000 residents. Two streams (Waikamoi and Puohokamoa) stream are supposed to have partial restoration, but with no compliance or monitoring schedule in place for East Maui, that Commission order, may or may not ever be implemented.
- **On the impacts of lack of stream channel and diversion structure management on the health and safety of downstream residents in the Huelo Lease area.** The EIS needs to include information and implementation strategies for a storm water management plan for EMI diversion structures and the watershed lease lands above populated communities like Honopou, Ho’olawa and Huelo. Currently the lack of maintenance or modification of EMI diversion structures and the stream channels allow storm waters to accumulate to dangerous levels, erode stream banks and uproot trees, and carry massive debris loads downstream posing extreme hazards and cutting off access. These conditions have already impacted older culverts, bridges and other essential infrastructure, putting community members at risk.
- **On impacts of continued steam diversions on Hawaiian traditional use and small farmers in the Huelo lease area.** Alternative 1 falsely assumes that all East Maui stream water not “needed” to meet the Water Commission’s 2018 Instream Flow standards can be transported to Central Maui with no impacts to the unmet needs of downstream farm owners and traditional Hawaiian water users in the Huelo Lease area ,and so it has not provided any information on this required topic. The continued dewatering of the majority of streams in the Huelo lease area has impacted and continues to impact Hawaiian families who traditionally gathered from these streams and wish to pass on this knowledge to future generations. It has also impacted the many small commercial and subsistence farms in the lands below Huelo lease area.

IMPACTS TO RESIDENTS AND TRADITIONAL HAWAIIAN USERS OF E. MAUI LEASE AREA

The DEIS needs to fully declare the environmental implications of the proposed Alternative 1:

- **On impacts to traditional fishing practices including ocean fisheries in the entire East Maui area.** The DEIS Marine Study (Appendix B) examined water chemistry, tidal action and sea level rise impacts of 7 East Maui streams over a 5 day period in January 2018 and a 5 day period in July 2018. Based on this brief survey, which collected no data on the presence or absence of fish in the ocean or ocean estuaries where streams meet the ocean, the EIS concluded:
 - “Owing to continual, intense wave energy, these nearshore do not constitute important habitats for coral reef communities and associated marine species.”
 - The DEIS and the Cultural Impact Assessment went on to conclude, that in spite of substantial generational knowledge about the importance of stream flows to marine fisheries gathered in the Declarations of East Maui residents during the 2014-15 Water commission contested case, the presence or absence of freshwater stream flows into the ocean would have no impact on marine life or on Hawaiian cultural practices associated with traditional fishing or gathering of ocean marine life.
 - The EIS needs to acknowledge that traditional Hawaiian knowledge of East Maui coastal areas, based on longtime observation, connects freshwater stream flows with expanded muliwai (estuaries) that act as nurseries for marine fish species as well as expanded offshore fisheries due to the food source provided by native O’opu fry that travel to the ocean to mature. With limited stream flows, both those parts of the ecological cycle are extremely limited or not present, which impacts marine life populations. The EIS did not “fully declare the environmental implications” of the proposed Alternative 1 because it examined only a narrow group of data, assumed that fish only live in reef environments, and ignored other substantial information. provided by Hawaiian residents of East Maui.
- **On impacts to expanded farming and food production in the Entire East Maui Lease area if the majority of stream water that would naturally be available in East Maui communities is transported to the dry plains of Central Maui.** The EIS needs to acknowledge that East Maui has far more than 35 acres that are and could be utilized for potential Commercial truck farms, and far more than 44 acres that can be used for wetland kalo, if sufficient water were available to get through the dryer months. These figures were based on data from a handful of streams involved in the CWRM IIFS contested case. The EIS needs to provide data from ALL of East Maui, including the Huelo Lease area where most streams had no IIFS review.
- HAR 11-200-16 (f) requires :
 - The draft EIS shall describe in a separate and distinct section alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks

- Alternative 2: the “Reduced Water Alternative” needs to include “rigorous exploration and objective evaluation” of an Alternative Plan. This Alternative Plan needs to discuss how to provide for sufficient stream water to remain in Ho’olawa, Waipio, Mokuapapa, Hanawana and Kailua streams that serve the communities in the Huelo Lease areas, and also provide for native streamlife and Traditional Cultural use in all the Huelo Lease area streams. This plan would specify appropriate soil preparation, crops and crop acreages in the Mahi Pono planting area that would support Alternative 2, and allow farming in Central Maui with a reduced water demand from East Maui.

IMPACTS TO HA’IKU AND UPCOUNTRY FARMERS AND TRADITIONAL HAWAIIAN USERS

The DEIS needs to fully declare the environmental implications of the proposed Alternative 1 outside the East Maui Lease Area in the Upcountry area :

- **On Hawaiian families in Ha’iku-Pe’ahi who wish to grow kalo on family lands located along streams outside the East Maui lease area.**
- **On small family farms in Ha’iku-Pe’ahi region that need abundant, reliable, affordable water for orchards and commercial and subsistence food crops.**
- **On local Ha’iku-Pe’ahi area fishers and native Hawaiian Traditional Cultural gatherers and users.**
- The DEIS assumes that the diversions of the East Maui Lease area streams and all the remaining streams between Honopou stream and Maliko Gulch has no impact on anyone who lives, farms, fishes or gathers in the 16 sq miles area of fertile Ha’iku-Pe’ahi lands and Ha’iku-Pe’ahi coastlines that had legendary fisheries.
- This assumption is made by the DEIS, ignoring the public testimony calling for restored streams in the Ha’iku area, and seeking to present only information that paints a favorable picture of the Mahi Pono farm plan’s large water needs. The DEIS assumes from 89 mgd to 92 mgd of East Maui stream water is needed to irrigate 16,000 acres of orchards and crops and 5,000 acres of grazing land in Central Maui for the Mahi Pono Farm Plan. If 89 mgd was used that would average 4,248 gal./acre/day, similar what sugar cane demanded.
- The needs of others who live and farm along the diverted streams in Ha’iku-Pe’ahi are simply ignored. Many Ha’iku-Pe’ahi area residents have no access to the County’s upcountry water system and need to use stream water to irrigate if they wish to farm. The Ha’iku-Pe’ahi families who do have access to County water **do not depend on the EMI ditch system as Ha’iku is served by County well water.**
- These Ha’iku-Pe’ahi residents get only impacts, and no benefits if large amounts of East Maui stream water are diverted by A&B. Ha’iku area customers with no County water service depend upon numerous private wells and some small springs.

- The assumption in the DEIS that all Upcountry residents would benefit if EMI/A&B/Mahi Pono diverts as much water as legally allowed from East Maui and the streams beyond the lease area, does not really apply to the 10,000 plus residents who live and farm in the Ha'iku-Pe'ahi area. The DEIS does not refer to this fact or make it clear.
- The EIS needs to fully declare the environmental implications of the proposed Alternative 1 and the Farm Plan it supports on the 10,000 plus existing residents, farmers, and native Hawaiian Cultural users in the Ha'iku area- between Honopou and Maliko streams. These local residents share their need for flowing streams to support their farms at HCA meetings.
- Since 2016, many Ha'iku-Pe'ahi streams had their diversion gates open because HC&S ceased sugar production and residents were able to use stream waters. Alternative 1 makes no provisions for Ha'iku-Pe'ahi farmers or Hawaiian families who hope to continue to use stream water to grow food.
- Alternative Mahi Pono farm plans that share the stream waters with Ha'iku-Pe'ahi residents need to be discussed in the EIS.

Mahalo for considering our community comments. We wish to remain a consulted party.

Ha'iku Community Association

PO Box 1036, Ha'iku, HI 96708



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Maile Davis
Haiku Community Association
P.O. Box 1036
Haiku, HI 96708

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Maile Davis:

Thank you for comments dated October 25, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am writing to you on behalf of the Ha‘iku Community Association regarding our comments on the East Maui Water Leases Draft EIS. Our Board of Directors voted to submit comments on the DEIS, and we have heard from a number of other citizens in our community who also wish to submit comments, since they are directly affected by the East Maui Water Lease actions described in the DEIS.*

Response 1: We acknowledge that the Ha‘ikū Community Association is submitting comments to the subject Draft EIS, whom has also heard from numerous citizens who also wish to submit comments. Please note that we received over 400 comments during the public comment period on the subject Draft EIS.

Comment 2: *We have heard concerns that the present DEIS is missing key information that should be included, in order for the public to provide informed feedback to the DEIS.*

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*The current DEIS contains no specific information regarding the water reservation amounts from the East Maui lease area needed by DHHL. **This information is now available and was publicly offered by DHHL staff at the Oct 9, 2019 BLNR meeting.** These specific legally protected water reservations should be INCLUDED in the DEIS, and Mahi Pono water use plans adjusted accordingly to reflect this amount, in order for the public and agency comment process to be based upon accurate information. A discussion of whether it is legal for A&B /Mahi Pono to assume that the DHHL “water reservation” can be utilized by Mahi Pono until it is “needed by DHHL” should also be included in the DEIS. It is our understanding that the Waiola o Molokai vs DHHL case dealt with a similar situation, and the DHHL prevailed.*

Response 2: We respectfully disagree with your comment that the Draft EIS contains no information regarding the water reservation amounts for the Department of Hawaiian Home Lands (DHHL). Specific information regarding the DHHL’s future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL’s Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown on pages 2-4 to 2-7. As explained in on pages 2-4 to 2-7, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following

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adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water, CWRM could act on a reservation request related to a proposed lease.

As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the Department of Land and Natural Resources' (DLNR) Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

While Mahi Pono's current farm plan assumes the full use of the water that can be diverted from East Maui streams after compliance with the CWRM D&O, Mahi Pono will be obligated to reduce elements of its farm plan, and thus the availability of crop, to accommodate the permanent reduction in available water resulting from DHHL's allocation. The Reduced Water Volume alternative described in Chapter 3 of the EIS provides an assessment of the impacts of less water being made available for the Proposed Action, including Maui Pono farm plan in the Central Maui agricultural fields. Specifically, consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

Please note that Section 2.1.1 of the Draft EIS stated, with respect to the DHHL reservation, that "*Until that reservation is physically claimed, however, it will be available for use by the lessee.*" That statement has been clarified in the Final EIS as shown on pages 2-4 to 2-7, as it is uncertain whether the DHHL reservation amount would be available to the lessee until such time as it is needed by DHHL. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease

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lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

Please note that as discussed in Section 2.1.2 of the Draft EIS, under the Proposed Action, at full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd will be diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at an

Comment 3: *The current DEIS also assumes that 10 years will be required to “remove sugar cane and weeds” for the 15,975 acres proposed for future Mahi Pono crops, and therefore a shorter term lease will not be possible. Since that section was written, thousands of acres of Mahi Pono Land was burned, effectively removing cane and weeds: 5,300 acres of Mahi Pono farmland burned below Pukalani (Aug 1, 2019) and 9,200 acres of Mahi Pono and state land burned in Central Maui (July 2019). This status information should be included in the DEIS for public comment as regards the factors influencing the length of water lease agreements.*

Response 3: You are correct that as explained in Section 2.1.5 of the Draft EIS, it is estimated that 10 years will be required for Mahi Pono and lessees to remove volunteer sugarcane and weeds from the approximate 30,000 acres, amend soils, install field improvements, build warehouses and other structures, and plant crops. However, please note that this is not for 15,975 acres.

Since the publication of the Draft EIS, please note that Section 2.1.4 of the Final EIS has been revised to reflect Mahi Pono's current and near-term expected water use as shown on pages 2-30 and 2-32, which details average water being diverted from East Maui streams through the EMI Aqueduct System and how that water will be used. It important to note that as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

Regarding your comment about a shorter lease term, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully

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analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Comment 4: *That being said, we respectfully request that A&B, Inc/ EMI withdraw the present document and resubmit that document with such key information updated. The process of reading and offering substantial comments on such a large document is quite overwhelming and it is important that those willing to commit to such a process be given more adequate time, and be provided with the full range of information available.*

Response 4: We respectfully disagree with our comment. As noted in the responses above, the information you claimed was missing was in fact within the Draft EIS, and has been updated accordingly. Regarding your comment about being given adequate time to review such a large document, please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no

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statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.



Hui o Nā Wai 'Ehā

Huionawai4@gmail.com · www.huionawaieha.org · 501c3 Non-Profit Organization

November 6, 2019

Hui o Nā Wai 'Ehā (Board of Directors)

Hökūao Pellegrino
(President)

Koa Hewahewa
(Vice President)

Lani Eckart-Dodd
(Treasurer)

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(Board Member)

Kamalani Uehara
(Board Member)

Maui Tomorrow (Collaborator)

Albert Perez
(Executive Director)

Legal Counsel

Isaac Moriwake
(Earthjustice)

Pamela Bunn
(Dentons)

TO: Applicant: Alexander & Baldwin Inc. (A&B)/East Maui Irrigation Company, Limited (EMI), Collectively referred to as A&B, Mahi Pono waterleaseeis@wilsonokamoto.com

Consultant: Mr. Earl Matsukawa AICP, waterleaseeis@wilsonokamoto.com (808) 946-2277

1907 S. Beretania St., Suite 400, Honolulu, Hawai'i 96826

Approving Agency: Mr. Ian Hirokawa, ian.c.hirokawa@hawaii.gov and Suzanne Case, DLNR Chairperson, 151 Punchbowl St., Honolulu, Hawai'i 96813

FROM: Hui o Nā Wai 'Ehā, Huionawai4@gmail.com 213 West Waikō Road, Wailuku, Hawai'i 96793

RE: East Maui Water Lease Draft-EIS Proposed Lease (Water Lease) for Nāhiku, Ke'anae, Honomanu, Huelo License Area

Please accept our comments on the subject DEIS

Hui o Nā Wai 'Ehā is a Native Hawaiian non-profit organization that was established in 2003 and has a membership of over 500 which include kuleana kalo and diversified farmers, engaged Maui community members, water resource management advocates and instream users. The mission of Hui o Nā Wai 'Ehā is to advocate for the restoration and stewardship of mauka to makai streamflow in Waikapū, Wailuku, Waiehu and Waihe'e Streams (Nā Wai 'Ehā), to protect cultural and natural resources related to traditional and customary practices of Native Hawaiian kalo farmers and to engage the Maui community in water resources management education and outreach programs.

Hui o Nā Wai 'Ehā Board of Directors and members deeply care about ka wai a Kāne as it relates to both surface and ground water. Water is a public trust resource and one of if not the most important natural and cultural resources on earth. Native Hawaiians have a close affinity with the waters of Kāne and have the utmost respect for its use. We are very concerned about this proposed lease of public water because of its ability to allow corporations such as A&B and Mahi Pono to continue causing negative impacts to watersheds, streams, native aquatic species, traditional and customary rights of Native Hawaiian kalo farmers, nearshore fisheries-estuaries, and groundwater aquifers via their plantation era diversion and water delivery systems. Hui o Nā Wai 'Ehā values agriculture, especially that of traditional agricultural systems and understand the importance of food security. The former leased areas which are being proposed to be leased again by A&B/Mahi Pono through this EIS process were some of the most abundant and fertile agricultural lands utilized by Native Hawaiians historically. The development of plantation era systems over 150 years ago destroyed Native Hawaiian

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The Mission of Hui o Nā Wai 'Ehā is to advocate for the restoration and stewardship of mauka to makai streamflow in Waikapū, Wailuku, Waiehu, Waihe'e Streams (Nā Wai 'Ehā), to protect cultural and natural resources related to traditional and customary practices of Native Hawaiian kalo farmers and to engage the Maui community in water resource management education and outreach programs.

lifestyles, traditions and system by which Native Hawaiians self-managed watersheds and vast agricultural complexes. Generations were lost amongst the lack of opportunities to continue a self-sufficient way of life and community-based agricultur. Luckily however, a lot of the cultural landscapes in these East Maui areas are still present and a new generation of Native Hawaiians and others are biting at the bit to return to these lands to cultivate food and manage mauka to makai watersheds again, like the way our ancestors once did. None of this can happen, due to the fact that corporations such as A&B and Mahi Pono want to continue to divert millions of gallons of water from this region to lands that are marginal or just above average for agricultural use.

Hui o Nā Wai 'Ehā has a close affinity with Native Hawaiian community members from Maliko to Wailuanui and all the ahupua'a and valleys in between. We understand exactly what they are going through because we are fighting for the same things they are as it relates to the waters of our four great streams, Waikapū, Wailuku, Waiehu and Waihe'e. Stream diversions and ditch systems have negatively impacted our moku since 1862 and still do so today. Nā Wai 'Ehā was the largest contiguous kalo growing region in Hawai'i and the moku of Hāmākuapoko, Hāmākualoa, and Ko'olau where these A&B-Mahi Pono proposed leases take places was equally abundant and is worth every bit of effort to protect in perpetuity, especially as it relates to water resources.

Hui o Nā Wai 'Ehā understands that there were some stream/river diversions that were "given up", whereby stream flows were restored in a few of the 100+ East Maui Streams, especially in taro farming communities such as Wailuanui and Ke'anae. What is not necessarily being done is the removal of these diversion and ditch systems to ensure the watershed and/or streams return back to their natural state and without control of corporations such as A&B-Mahi Pono. According to the DEIS, East Maui only has 44 acres for potential kalo cultivation and that the 10 streams restored in 2018 as part of the East Maui Water Rights Contested Case gives East Maui people all the water they need. This is farthest from the truth and unacceptable. That statement does not address the dozen plus other areas in which lo'i kalo was cultivated. There is very little to no discussion about this in the DEIS and is something that needs to be addressed. The EIS needs to address how the lack of removal of actual concrete and steel diversion structures impact native habitat and species. Opening gates and returning "full" stream flow to 10 East Maui Streams and returning only partial flow to 7 other streams does not suffice when man-made structures are still in place. The EIS needs to address how the lack of partial to no removal of these structures have on the overall health of the stream, native aquatic species and traditional agricultural systems below them.

The DEIS also assumes that most of the East Maui streams "baseline condition" is the previously diverted state when sugar farming was in full swing. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities. There are a vast number of taro farming communities and ahupua'a that are equal in value to places like Ke'anae-Wailuanui and have the potential for Native Hawaiian lineal descendants to return to their ancestral lands and cultivate them for their communities and the overall food security of Maui; i.e. Honomanu, Nāhiku, Honopou, Halehaku, Pe'ahi, Huelo, Ho'olawa, Makapipi,

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The Mission of Hui o Nā Wai 'Ehā is to advocate for the restoration and stewardship of mauka to makai streamflow in Waikapū, Wailuku, Waiehu, Waihe'e Streams (Nā Wai 'Ehā), to protect cultural and natural resources related to traditional and customary practices of Native Hawaiian kalo farmers and to engage the Maui community in water resource management education and outreach programs.

Maliko, etc..). The EIS needs to discuss methods of restoring the 13 streams in the Honopou to Kailua area, where many Native Hawaiians and long-standing community members live and struggle to farm due to the lack of streamflow as well as gathering because of plantation era diversions and irrigation systems. All that is described in the DEIS is that it estimated that all of the water will be diverted from the streams 60% of the time. The EIS needs to discuss the impacts of continuing those diversions, which has decimated 85% of native stream habitat and negatively impacted thousands of local residents. The EIS needs to address this head on and allow for an option whereby streams are no longer diverted and the promotion of a restored East Maui ecosystems, watershed and self-sufficient communities in these areas described above.

The EIS should include discussion of a plan and funding to manage the invasive species in the license area. Invasive plants and animals are hurting the health and the function of the watershed lands and as well as Native Hawaiian farmers in the lower reaches of these valleys. This includes the fact that diversions promote stagnant pools along streambeds and increases in breeding grounds for mosquitos that carry Dengue fever and other viruses that affect both residents and native aviary species.

Continuing mass water diversion from East Maui will greatly have an impact on native aquatic species and native insects. The current state which allows for mass diversions in East Maui also severely impacts lo'i kalo farmers both struggling to farm and those trying to return to their ancestral lands to farm. The DEIS assumes that there is only a small fraction of water being diverted and that there is no impact on kalo growers (both current and future) native stream life, near-shore and off-shore fisheries and recreational/aesthetic values which is simply not true at all. The EIS needs to address the impacts on the above discussion along with potential future impacts by not having streams restored. The EIS needs to address and evaluate environmental impacts on streams based on what they were like pre-diversions.

Mahi Pono plans to use the total amount of East Maui Stream water available, including any "water reservation" held by the Department of Hawaiian Homelands (which has requested East Maui stream water for its projects). This is unacceptable and the EIS needs to show how this issue is being addressed for the future needs of Native Hawaiian for both housing and agriculture.

The DEIS does not include any detailed summary of how stream flows will be measured and monitored above and below diversions and within the ditch systems by a non-bias third party (I.e. community members in conjunction with CWRM/USGS). There are now Interim Instream Flow Standards in effect for 10+ East Maui Streams and there are currently no monitoring systems in place to ensure that the law is being followed and that diverters are complying with them. One of the major things plaguing Nā Wai 'Ehā is the fact that corporations like Wailuku Water Co. and Mahi Pono similar to that of East Maui still have control of these diversion systems, capture 100% of the streamflows and release what is "required by law" below via the IIFS rulings. This poses major issues in terms of their ability to comply, follow the law and allowance for access to these areas for transparency. In addition, plantation era systems continue to allow for dry stream beds in-between diversions and IIFS points. This negatively impacts native

aquatic species habitat and their ability to migrate upstream. The DEIS does not include any detailed discussions on how these issues will be addressed in East Maui. Furthermore, there is a need for collective engagement between CWRM, community members, kuleana kalo farmers, State and A&B-Mahi Pono which never seems to happen let alone the fact that this was not addressed in the DEIS as an important factor in addressing connectivity, compliance and enforcement issues. These points need to be strongly considered in the Final EIS.

Hui o Nā Wai 'Ehā thanks you for this opportunity to address the DEIS and humbly asks that you include this important information and address these points in the Final EIS. Mahalo nui loa! Ola I ka wai!

Me ke aloha,

Hui o Nā Wai 'Ehā Board of Directors



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Hui o Nā Wai 'Ehā Board of Directors
Hui o Nā Wai 'Ehā
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Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Board of Directors of Hui o Nā Wai 'Ehā:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules, Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Hui o Nā Wai 'Ehā is a Native Hawaiian non-profit organization that was established in 2003 and has a membership of over 500 which include kuleana kalo and diversified farmers, engaged Maui community members, water resource management advocates and instream users. The mission of Hui o Nā Wai 'Ehā is to advocate for the restoration and stewardship of mauka to makai streamflow in Waikapū, Wailuku, Waiehu and Waihe'e Streams (Nā Wai 'Ehā), to protect cultural and natural resources related to traditional and customary practices of Native Hawaiian kalo farmers and to engage the Maui community in water resources management education and outreach programs.*

Response 1: We acknowledge that the Hui o Nā Wai 'Ehā is a Native Hawaiian non-profit organization, with over 500 members which includes kuleana kalo and diversified farmers, Maui community members, water resource management advocates, and instream users, whose mission is to advocate for the restoration and stewardship of mauka to makai streamflow of in Waikapū, Wailuku, Waiehu, and Waihe'e streams, to protect cultural and natural resources related to traditional and customary practices of Native Hawaiian kalo farmers and to engage the Maui

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community in water resources management education and outreach programs. Please note that the subject Water Lease does not involve Waikapū, Wailuku, Waiehu, and Waihe'e streams.

Comment 2: *Hui o Nā Wai 'Ehā Board of Directors and members deeply care about ka wai a Kāne as it relates to both surface and ground water. Water is a public trust resource and one of if not the most important natural and cultural resources on earth. Native Hawaiians have a close affinity with the waters of Kāne and have the utmost respect for its use. We are very concerned about this proposed lease of public water because of its ability to allow corporations such as A&B and Mahi Pono to continue causing negative impacts to watersheds, streams, native aquatic species, traditional and customary rights of Native Hawaiian kalo farmers, nearshore fisheries-estuaries, and groundwater aquifers via their plantation era diversion and water delivery systems.*

Response 2: We acknowledge your comments and understand that the Hui o Nā Wai 'Ehā Board of Directors and members deeply care about water resources as it relates to both surface and groundwater. Regarding your comment about water being a public trust, we acknowledge that the Proposed Action (the issuance of a 30-year Water Lease by the Board of Land and Natural Resources (BLNR)), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and its sister agency, the Commission on Water Resource Management (CWRM), as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action as shown on pages 1-25 to 1-27.

Regarding your comment about negative impact to watersheds, as discussed in the EIS, Hawai'i Revised Statutes (HRS) § 171-58(e) requires a watershed management plan in connection with a water lease. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy

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of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically address identifying priority outcomes essential to maintain or restore biological integrity of the watershed. The goals of watershed management plans are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Regarding impacts about streams and native aquatic species, this is discussed further in subsequent Responses #5 and #8 below. Please refer to those for more detail.

Regarding impacts to traditional and customary rights of Native Hawaiian kalo farmers, this is discussed in further detail in Response #6 below.

Regarding your comment about impacts to nearshore fisheries-estuaries, this is discussed further in subsequent Response #13 below.

Regarding impacts to groundwater aquifers, it is unclear to as what groundwater aquifers you are referring to. Please note that under the Proposed Action, surface water is diverted from the East Maui License Area (which lies largely over the Ke'ānae, Waikamoi and Honopou aquifers in the Ko'olau Aquifer Sector (See EIS Figure 4-17), to the Central Maui agricultural fields, which largely lie over the Pā'ia Aquifer in the Central Aquifer Sector (See EIS Figure 4-18)). As detailed in Section 4.2.2 of the EIS, the groundwater pumpage within the Ko'olau Aquifer Sector is far below the Sustainable Yield (SY). This section addresses impacts to the Ko'olau Aquifer Sector in East Maui as well as the anticipated impacts to the Central Aquifer Sector from the conveyance of East Maui surface water to Central Maui for irrigation purposes. Note that Section 4.2.2 of the Final EIS has been updated to reflect a USGS report published in 2019 as shown on page 4-71 for East Maui and page 4-76 for Central Maui.

Comment 3: *Hui o Nā Wai 'Ehā values agriculture, especially that of traditional agricultural systems and understand the importance of food security. The former leased areas which are being proposed to be leased again by A&B/Mahi Pono through this EIS process were some of the most abundant and fertile agricultural lands utilized by Native Hawaiians historically. The development of plantation era systems over 150 years ago destroyed Native Hawaiian lifestyles, traditions and system by which Native Hawaiians self-managed watersheds and vast agricultural complexes. Generations were lost amongst the lack of opportunities to continue a self-sufficient way of life and community-based agriculture. Luckily however, a lot of the cultural landscapes in these East Maui areas are still present and a new generation of Native Hawaiians and others are*

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biting at the bit to return to these lands to cultivate food and manage mauka to makai watersheds again, like the way our ancestors once did. None of this can happen, due to the fact that corporations such as A&B and Mahi Pono want to continue to divert millions of gallons of water from this region to lands that are marginal or just above average for agricultural use.

Response 3: Regarding your comment about East Maui being some of the most abundant and fertile agricultural lands utilized by Native Hawaiians historically, the Archaeological Literature Review and Field Inspection (LRFI) prepared by Cultural Surveys Hawai'i (CSH) included an analysis of the natural and built environment of the License Area, a comprehensive review of traditional and historic background information of the East Maui region, and is included as Appendix E in the EIS and summarized in Section 4.5 of the EIS. The LRFI and Section 4.5 of the EIS have been updated to include a supplemental discussion regarding historical agricultural land use in East Maui as shown on pages 4-143 to 4-147.

For the analysis conducted in Appendix I of the EIS (East Maui Water Lease: Agricultural and Related Economic Impacts report prepared by Plasch Econ Pacific LLC), taro farms in East Maui (from Honopou to Nāhiku), including use of water from streams not subject to the Findings of Fact, Conclusions of Law, and Decision and Order in Case CCH-MA13-01 dated June 20, 2017 issued by CWRM (the "CWRM D&O"), are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). This estimate is updated from the Draft EIS, where the analysis was based upon known landowners who have about 45 acres in East Maui that are suitable for growing taro. It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams ordered for full restoration under the CWRM D&O. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. This acreage is assumed for the Proposed Action and all associated alternatives since nearly all potential new taro cultivation is assumed to draw water from fully restored taro streams which will have the same flows under all alternatives. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O "*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*" (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on the pages 4-288 to 4-293. As discussed in Section 4.7.4 of the EIS, at its peak, taro production in Hawai'i was thought to cover

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approximately 20,000 acres. By 1900, taro production Hawai‘i decreased to about 1,280 acres, and by 1966, only 400 acres were farmed. As of 2015, land in crops were estimated at about 340 acres. According to the Agricultural Land Use Maps (ALUM), the East Maui communities had about 105.5 gross acres in taro in 1980, including about 96.3 acres in Ke‘anae and Wailua, and 9.3 acres in Hūelo. By 2015, the acreage in taro had fallen to about 34.2 acres in taro, and only about 30 gross acres in taro by the end of 2017.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Regarding your comments, *“development of plantation era systems over 150 years ago destroyed Native Hawaiian lifestyles, traditions and system by which Native Hawaiians self-managed watersheds and vast agricultural complexes,”* note that Section 4.5 of the EIS and Appendix E provide a detailed and comprehensive report accounting the history of East Maui as it relates to historical and archaeological resources and provides background on traditional and customary practices that occurred within the region, as further discussed in Section 4.6 of the EIS and Appendices E (LRFI) and F (Cultural Impact Assessment (CIA)). Moreover, Section 4.7.4 of the Final EIS has been updated to include a discussion related to the decline of farming in East Maui as it relates to taro cultivation as shown on pages 4-288 to 4-293.

Regarding your comments, *“a lot of the cultural landscapes in these East Maui areas are still present and a new generation of Native Hawaiians and others are biting at the bit to return to these lands to cultivate food and manage mauka to makai watersheds again, like the way our ancestors once did”* note that Section 4.6 of the EIS and Appendix F (CIA) identify impacts to the regional environment, taro farming, and freshwater resources within the License Area based public documentation and consultation with the community. Moreover Section 4.7.2 and Appendix G (Social Impact Assessment) of the EIS documents the history of the East Maui region in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono.

We respectfully disagree with your comment that the agricultural lands in Central Maui are marginal or just above average for agricultural use. As summarized in Section 4.7.4 of the Draft EIS and Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts):

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Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

The basis for this finding is given in Subsection 5 and Figures 4 through 12 of Appendix I of the Draft EIS.

Moreover, as discussed in Section 5 of Appendix I and Section 4.7.4 of the Draft EIS, the overwhelming majority of the Central Maui agricultural fields (approximately 80%) are rated by the UH Land Study Bureau (LSB) as having the highest Overall Productivity Rating of "A" (on a scale of "A" to "E" with "E" being the lowest soil rating), and a little over 11% has a "B" rating. In other words, about 27,567 acres (90.9%) are high-quality lands rated A or B. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Classification System, was developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), and the College of Tropical Agriculture, University of Hawai'i. Approximately 25,669 acres of the Central Maui agricultural fields are classified under the ALISH system as "Prime", which means "agricultural land which is land that is best suited for the production of crops because of its ability to sustain high yields with relatively little input and with the least damage to the environment." Also, as discussed in Section 5.1.4 of the EIS and Section 5 of Appendix I, approximately 22,000 of the 30,000 acres of agricultural fields in Central Maui are designated as Important Agricultural Lands (IAL). Under Article XI, Section 3, of the Constitution of Hawai'i, the State is required to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. HRS Chapter, 205, § 205-41 through § 205-52, provides for the designation of IAL. As stated in HRS Chapter 205: "*The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations.*" IAL designation facilitates the long-term dedication of lands for future agricultural use so long as there is a sufficient supply of water to allow for profitable farming. As such, the Central Maui agricultural fields are highly suitable for agricultural production and uses and are not considered "marginal" as you suggest.

Comment 4: *Hui o Nā Wai 'Ehā has a close affinity with Native Hawaiian community members from Maliko to Wailuanui and all the ahupua'a and valleys in between. We understand exactly*

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what they are going through because we are fighting for the same things they are as it relates to the waters of our four great streams, Waikapū, Wailuku, Waiehu and Waihe'e. Stream diversions and ditch systems have negatively impacted our moku since 1862 and still do so today. Nā Wai 'Ehā was the largest contiguous kalo growing region in Hawai'i and the moku of Hāmākuapoko, Hāmākualoa, and Ko'olau where these A&B-Mahi Pono proposed leases take places was equally abundant and is worth every bit of effort to protect in perpetuity, especially as it relates to water resources.

Response 4: Regarding your comment about the moku of Hāmākuapoko, Hāmākualoa, and Ko'olau being equally abundant as the Nā Wai 'Ehā with regard to taro growing, please see Response #3 above. It is acknowledged that East Maui historically had an abundance of agriculture activity, including taro cultivation. However, please note that the majority of these lands for taro cultivation, historically and potential, occur outside of the License Area, which is the land subject to the proposed Water Lease. The LRFI and Section 4.5 of the EIS have been updated to include a supplemental discussion regarding historical agricultural land use in East Maui as shown on pages 4-143 to 4-147.

Regarding your comment about protecting these lands in perpetuity, especially as it relates to water resources, it is unclear what is specifically meant. We are unsure if you are referring to the taro lands below the License Area, or the License Area itself, which consists solely of state-owned lands. Regarding the lands outside of the License Area, these are mainly privately owned lands. The Water Lease will not give the lessee any authority over or to use lands outside of the License area. From a water resource perspective, as you emphasize and as noted in Response #3 above, all of the streams in the License Area that historically supported taro cultivation in the moku of Hāmākuapoko, Hāmākualoa, and Ko'olau will be fully restored, with all natural flow water available for taro cultivation and other uses.

As discussed in Section 5.1 of the EIS, the License Area consists of lands owned by the State of Hawai'i and are designated within the State Land Use Conservation District. The intent of the Conservation District is to preserve such lands and valuable resources through appropriate management and use, which is administered by the BLNR.

Moreover, as discussed in Section 2.1 of the Draft EIS and in Response #2 above and #11 below, the water lessee will be subject to all applicable requirements under HRS § 171-58, which articulates terms for the disposition of a water lease, including the development and implementation of a watershed management plan. See pages 2-2 to 2-4 providing the updated Final EIS text regarding the content requirements for a watershed management plan.

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Also please note that A&B was a founding member of the East Maui Watershed Partnership (EMWP). The existing EMWP Management Plan was prepared in July 2009 and amended in July 2018, has been attached as Appendix O to the Final EIS. The EMWP Management Plan describes the watershed resources such as water, cultural / physical resources, native flora and fauna, and recreational resources. The EMWP Management Plan identifies the watershed threats and management objectives for the East Maui Watershed. Under the Proposed Action, it is anticipated that EMI and/or Mahi Pono will continue to pursue watershed management activities.

Comment 5: *Hui o Nā Wai 'Ehā understands that there were some stream/river diversions that were “given up”, whereby stream flows were restored in a few of the 100+ East Maui Streams, especially in taro farming communities such as Wailuanui and Ke‘anae. What is not necessarily being done is the removal of these diversion and ditch systems to ensure the watershed and/or streams return back to their natural state and without control of corporations such as A&B-Mahi Pono.*

Response 5: Contrary to your statement that there are "100+" streams, the total number of streams/tributaries within the License Area is 36 total streams (which includes their tributaries) as indicated by Table 1-3 in the Final EIS. However, please note that the Draft EIS identified 37 streams within the License Area as it includes Puakea Stream. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is subject to the CWRM D&O as a “connectivity stream.” Of these 36 total streams, only 25 are proposed to be diverted under the Proposed Action as a number of the streams were fully restored under the CWRM D&O.

Regarding your comment about removal of diversions and ditch system structures to ensure the watershed and / or stream return back to their natural state, it is also acknowledged that the subject EIS does not propose the removal or modification of any diversion structures as part of the Water Lease. The work related to diversion modifications required for compliance with the Interim Instream Flow Standards (IIFS) under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

As discussed in Section 1.3.4 of the EIS, CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

Comment 6: *According to the DEIS, East Maui only has 44 acres for potential kalo cultivation and that the 10 streams restored in 2018 as part of the East Maui Water Rights Contested Case gives East Maui people all the water they need. This is farthest from the truth and unacceptable. That statement does not address the dozen plus other areas in which lo'i kalo was cultivated. There is very little to no discussion about this in the DEIS and is something that needs to be addressed.*

Response 6: Please note as discussed in Response #3 above, for the analysis conducted in Appendix I to the EIS (East Maui Water Lease: Agricultural and Related Economic Impacts report), taro farms in East Maui (from Honopou to Nāhiku), including use of water from streams not subject to the CWRM D&O, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams ordered for full restoration under the CWRM D&O. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. This acreage is assumed for the Proposed Action and all associated alternatives since nearly all potential new taro cultivation is assumed to draw water

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from fully restored taro streams which will have the same flows under all alternatives. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on the pages 4-288 to 4-293. As discussed in Section 4.7.4 of the EIS, at its peak, taro production in Hawai‘i was thought to cover approximately 20,000 acres. By 1900, taro production Hawai‘i decreased to about 1,280 acres, and by 1966, only 400 acres were farmed. As of 2015, land in crops were estimated at about 340 acres. According to the Agricultural Land Use Maps (ALUM), the East Maui communities had about 105.5 gross acres in taro in 1980, including about 96.3 acres in Ke‘anae and Wailua, and 9.3 acres in Hūelo. By 2015, the acreage in taro had fallen to about 34.2 acres in taro, and only about 30 gross acres in taro by the end of 2017.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 7: *The EIS needs to address how the lack of removal of actual concrete and steel diversion structures impact native habitat and species. Opening gates and returning “full” stream flow to 10 East Maui Streams and returning only partial flow to 7 other streams does not suffice when man-made structures are still in place. The EIS needs to address how the lack of partial to no removal of these structures have on the overall health of the stream, native aquatic species and traditional agricultural systems below them.*

Response 7: Please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals. Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the

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water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

The two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped.

Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate adverse impacts while taking total impacts caused into consideration. The physical act of removing diversion structures could generate adverse impacts to the surrounding environment in certain circumstances that would not occur if the structures were left in place. The above is discussed in more detail in Section 4.2.1 of the Final EIS as shown on pages 4-63 to 4-67.

Please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model does not address traditional agricultural systems. However, as discussed above in Response #5 above, the CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. Moreover, as discussed in Response #3 above, the CWRM ordered that streams subject to the D&O that are used for taro growing or for community and non-municipal domestic uses cease all diversions and have full stream flow restored.

Comment 8: *The DEIS also assumes that most of the East Maui streams “baseline condition” is the previously diverted state when sugar farming was in full swing. This avoids discussing the*

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option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

Response 8: The HSHEP model, which was used for the assessment of impacts to the native amphidromous stream species and is included in Appendix A and summarized in Section 4.2.1 of the EIS, does in fact analyze the no diversion scenario (termed the Natural Condition). The upper boundary (the Natural Condition) provides context to the maximum number of habitat units (HU) available for native species. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat for native stream species. This is a coherent position as it provides context to the best conditions possible for native species.

The HSHEP analysis similarly assessed the lower boundary of conditions, by modeling the impact of full diversion of the streams in the License Area. The lower boundary (the "Full Diversion Condition") reflects the maximum impact or maximum amount of habitat lost due to diversions. The use of the Full Diversion Condition as the lower boundary estimates the amount of available habitat under a scenario where the EMI Aqueduct System would divert its maximum capacity from the East Maui streams in the License Area. However, please note that none of the Proposed Action or any of the alternatives discussed in the EIS seek to increase diversion amounts over the maximum amount of water allowed to be diverted under the CWRM D&O, which is far less than the amount of water diverted at the peak of sugarcane production. The modeled assumption under the full diversion scenario is 100% diversion of "base or normal low" streamflow at all diversions within the EMI Aqueduct System. Thus, all habitat, entrainment, and barrier impacts were set to their maximum (greatest negative impact on species habitat) at all diversions. We acknowledge that the Full Diversion Condition resulted in more than half of all stream habitat being eliminated from the East Maui Streams as stated in Section 4.2.1 of the Final EIS.

The use of the Full Diversion Condition is also a historically coherent position as it reflects the conditions that were existing in East Maui streams for much of the past hundred years. Not considering diversion conditions under sugarcane agriculture seems disingenuous as it does not provide any context to a very well-known historical condition.

The combination of the lower and upper bounds provide the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as by definition the changes must fall somewhere between 100% diversion and 0% diversion.

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The HSHEP model also reviewed a diversion scenario that was in compliance with the IIFS set forth under the CWRM D&O (i.e. the Proposed Action), and a "no action" alternative where 30% of the flow remaining (after compliance with the IIFS under the CWRM D&O) in the License Area streams is diverted as discussed in Section 3.3 of the EIS.

The two scenarios presented, "2018 IIFS (Proposed Action)" and "No Action Alternative (30% remaining flow diversion)" are examples of how different flow restoration scenarios result in different amounts of HU restored, within the lower and upper bounds. The HSHEP model is used to quantify these differences based on flow restoration changes at diversions. The HSHEP follows a logical approach and systematically addresses on-the-ground conditions.

Hence, the EIS does provide an analysis of the impacts of "no diverted streams" on the availability of instream HU. However, that scenario is not one of the alternatives described in Chapter 3 of the EIS. Instead, as required by law, the EIS provides an analysis of the No Action alternative, i.e., a scenario where no Water Lease is issued. There, it is understood that approximately 30% of the water available from the License Area could still be diverted independent of the issuance of the Water Lease, as discussed in Section 3.3 of the EIS. Under this assumption, it is understood that the No Action alternative would result in more surface flow in the streams within the License Area, and therefore lesser associated impacts on instream HU than under the Proposed Action.

Comment 9: *There are a vast number of taro farming communities and ahupua'a that are equal in value to places like Ke'anae-Wailuanui and have the potential for Native Hawaiian lineal descendants to return to their ancestral lands and cultivate them for their communities and the overall food security of Maui; i.e. Honomanu, Nāhiku, Honopou, Halehaku, Pe'ahi, Huelo, Ho'olawa, Makapipi, Maliko, etc..).*

Response 9: Please note that it is unclear where these communities are as they do not show up within the Census Designated Place (CDP) database. However, it is assumed that some of these are communities that are situated along the streams that possess this name or communities below the regions of the License Area.

Please note as it relates to Honomanū, all streams within the Honomanū portion of the License Area have been restored either as "biological streams" or "connectivity streams." See EIS Section 1.3.4. Particularly, Honomanū Stream, itself has been ordered to be restored as a "biological stream" as discussed in Section 1.3.4 of the Draft EIS.

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All streams within the Nāhiku portion of the License Area have been ordered to be restored as “community streams” or “connectivity streams.” *Id.* Particularly, Makapipi Stream has been ordered to be fully restored as the community of Nāhiku below Hāna Highway depend upon this stream for taro cultivation.

Honopou Stream has been ordered to be fully restored by the CWRM D&O.

Halehaku Stream is a stream that is located outside the License Area and runs through privately owned land, thus it is not affected by the proposed Water Lease. It is unclear where the community of Pe‘ahi is, however, it is also assumed that the Pe‘ahi community is located in the area of the same name, which is outside of the License Area. The Huelo portion of the License Area saw restoration across the sector, with three streams fully restored (including Huelo stream), as well as restoration of a “biological stream” and one “connectivity stream.” See CWRM D&O at 268-69.

Ho‘olawa Stream was not subject to the CWRM D&O and thus did not receive a restoration status. This is one of the streams within the Huelo portion of the License Area.

Māliko Stream is located outside the License Area and runs through privately owned land, thus is not a subject of the proposed Water Lease.

As it relates to taro farming, please refer to Responses #3 and #6 above, as well as pages 4-288 to 4-293 of the Final EIS. All or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop) is assumed for the Proposed Action and all associated alternatives since nearly all potential new taro cultivation is assumed to draw water from fully restored taro streams which will have the same flows under all alternatives.

Moreover, the Cultural Impact Assessment (CIA) (Appendix F) prepared by CSH for the EIS has identified cultural impacts to taro farming as a result of the Proposed Action in Section 4.6 of the EIS as discussed in Response #3 above. Please note that the CIA was a regional study that was not limited to only the streams that were addressed by the CWRM D&O but, covered the entire License Area.

Comment 10: *The EIS needs to discuss methods of restoring the 13 streams in the Honopou to Kailua area, where many Native Hawaiians and long-standing community members live and*

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struggle to farm due to the lack of streamflow as well as gathering because of plantation era diversions and irrigation systems. All that is described in the DEIS is that it estimated that all of the water will be diverted from the streams 60% of the time. The EIS needs to discuss the impacts of continuing those diversions, which has decimated 85% of native stream habitat and negatively impacted thousands of local residents. The EIS needs to address this head on and allow for an option whereby streams are no longer diverted and the promotion of a restored East Maui ecosystems, watershed and self-sufficient communities in these areas described above.

Response 10: Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since the publication of the Draft EIS that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. Since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which was subject to the CWRM D&O as a "connectivity stream."

Regarding your comment that the EIS needs to discuss methods of restoring the non-petitioned streams in the Honopou to Kailua area, we acknowledge that the EIS does not specifically talk about how to *restore* the non-petitioned streams. These streams are anticipated to be diverted as they have been. Please note that these streams were included as part of the overall analysis of the EIS and associated technical studies. Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The HSHEP model in Appendix A and summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. Taken in isolation, for the non-petitioned streams, it is estimated that under the Proposed Action there is approximately an 88.2% reduction from the Natural Flow Condition scenario for these 12 streams. However, from a regional perspective (looking at all streams in the License Area), the License Area will see an overall increase in HU from historical diversion rates. Under the Proposed Action, the License Area will see an overall 13.8% increase in available HU when compared to historical diversions under sugarcane operations. Under the Proposed Action, the number of HU within the entire License Area is decreased by an estimated 36.1% from a theoretical Natural Condition (i.e., a condition where no streams are diverted). This is considered theoretical because even under the No Water Lease scenario, the EMI Aqueduct System would continue to divert 30% of the water available at the Honopou Stream boundary after compliance with the IIFS established under the CWRM D&O. However, under the Proposed Action, the number of HU is increased by approximately 27.4% in comparison to the Full Diversion condition that existed when the diverted water was used for sugar cultivation. This information is further detailed in Section 4.2.1 of the Final EIS, which has been revised as shown pages 4-56 to 4-67. HU, as defined by the HSHEP report (Appendix A), as relative measures of stream habitat where each unit length of stream is multiplied by the Habitat

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Suitability Indices for the particular species. It is important to recognize that the accumulation of HU for amphidromous species is additive, meaning that a single unit of stream may have total HU in excess of the stream area quantified. In other words, if HU for multiple non-competitive species in a given area are added together, the combined HU could be greater than the area. This is important when considering the total HU for all eight amphidromous species in a stream as the total HU for all eight species may be greater than the total stream area.

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 million gallons per day (mgd) will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams and will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Regarding your comment that those diversions will decimate 85% of native stream life habitat along the non-petitioned streams, note that the portion of the HSHEP report (Appendix A) that your comment refers to is limited in applicability to the non-petitioned streams only; it does not apply to all streams in the License Area. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams. Further, in that the non-petitioned streams currently have a 'status quo' IIFS, the Water Lease would not result in a "reduction" of 85% of HU for those streams. Rather, the Proposed Action, i.e., proposed Water Lease, represents a continuation of the level of diversion on these streams that historically occurred for many years. Your comment refers specifically to two scenarios -- the Natural Condition scenario and the Full Diversion Condition scenario -- considered under the HSHEP model, but which are scenarios that are not proposed in the EIS as the Proposed Action or alternatives. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams. Therefore, it would have been misleading to, as you suggested, to breakout the impacts to the non-petitioned streams in Section 4.2.1 of the EIS, as it applies to the Proposed Action.

Comment 11: *The EIS should include discussion of a plan and funding to manage the invasive species in the license area. Invasive plants and animals are hurting the health and the function of the watershed lands and as well as Native Hawaiian farmers in the lower reaches of these valleys. This includes the fact that diversions promote stagnant pools along streambeds and increases in breeding grounds for mosquitos that carry Dengue fever and other viruses that affect both residents and native aviary species.*

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Response 11: Regarding your comment about a plan and funding to manage the invasive species in the License Area, it is presumed that this would fall under a watershed management plan as discussed in Response #2 above. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. As discussed in the EIS, HRS § 171-58(e) requires that any new lease of water rights "shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan." In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable Watershed Management Plan. See pages 2-2 to 2-4 of the Final EIS.

Note that the minimum content requirements under the category of "Goals" address invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Regarding your comment about diversions creating stagnant pools for mosquito breeding, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat. Thus, an increase in habitat was predicted to occur at diverted flows.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. Second, Hawaiian streams are naturally flashy (i.e., they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta) regarding controlling introduced poeciliid fishes (e.g., guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. Unfortunately, this did not occur with increased streamflow. The

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introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed.

While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. Anecdotal observations made by Trutta staff members, support the continued presence of Culex mosquitoes under a wide range of stream flows as they reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i. Please note that Section 4.2.1 of the Final EIS has been updated to include the above discussions related to the Culex mosquito as shown on pages 4-58 to 4-61.

Regarding your comment about Dengue Fever, it is our understanding that there has been only one outbreak of Dengue Fever on the island of Maui which was in 2001 as noted in the CWRM D&O. Please note that according to the State Department of Health that Dengue Fever is not endemic to the State of Hawai'i and is relatively uncommon. Most cases that have occurred throughout the State have been contracted from exposure outside the State and being brought in either by residents or visitors.

Comment 12: *Continuing mass water diversion from East Maui will greatly have an impact on native aquatic species and native insects.*

Response 12: As discussed in Response #8 above, the HSHEP model in Appendix A and summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

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The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown on pages 4-61 to 4-62. The above excerpt and the updated text on pages 4-61 to 4-62 present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of HU, as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See on pages 4-56 to 4-67 of the Final EIS.

Comment 13: *The current state which allows for mass diversions in East Maui also severely impacts lo'i kalo farmers both struggling to farm and those trying to return to their ancestral lands to farm. The DEIS assumes that there is only a small fraction of water being diverted and that there is no impact on kalo growers (both current and future) native stream life, near-shore and off-shore fisheries and recreational/aesthetic values which is simply not true at all. The EIS needs to address the impacts on the above discussion along with potential future impacts by not having streams restored. The EIS needs to address and evaluate environmental impacts on streams based on what they were like pre-diversions.*

Response 13: Please note that the East Maui streams are not currently being diverted on a large scale. Section 2.1.4 of the Final EIS has been revised to discuss current water usage as shown on pages 2-30 and 2-32. As of October 2020, an average of 23.3 mgd was being diverted from the License Area streams through the EMI Aqueduct System. Moreover, even at full implementation of the Mahi Pono farm plan, diversion will be less than half of what it was while sugar production was on-going in Central Maui as discussed in Section 2.1.2 of the EIS.

With regards to impacts of taro farmers, please see Response #3 and Response #6 above. For the analysis conducted in Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts), taro farms in East Maui (from Honopou to Nāhiku), including use of water from streams not subject to the CWRM D&O, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā,

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and would rely primarily on the taro streams ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. This acreage is assumed for the Proposed Action and all associated alternatives since nearly all potential new taro cultivation is assumed to draw water from fully restored taro streams which will have the same flows under all alternatives.

With regards to impacts to native stream life, please see Responses #8, 10, and 12 above, explaining that it is anticipated that a negative impact will result from the Proposed Action which would result in approximately a 36.1% reduction in instream HU as compared to the theoretical Natural Condition (i.e., no diversions) modeled in the HSHEP, as explained in Response #10 above. However, the Proposed Action is expected to result in an increase of 13.8% in HU over the Full Diversion Condition (comparable to diversions during historical sugar operations). See EIS Section 4.2.1.

With regards to nearshore fisheries and off-shore fisheries, the collected data presented in Appendix B (East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry) and summarized in Section 4.2.3 of the EIS suggest that the broad scope of nutrient delivery conveyed from the streams to the ocean is limited. This is due to the intense mixing process that occurs when strong ocean currents – common in the nearshore ocean environments in East Maui – which quickly disperse a relatively small amount of fresh water into an exponentially larger ocean. Consequently, if nutrient concentrations in the ocean are not subject to substantial change, there is no meaningful vehicle for fishing to be negatively impacted by streamflow.

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams

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(Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83.

Regarding your comment that *"The EIS needs to address and evaluate environmental impacts on streams based on what they were like pre-diversions,"* note that it is not scientifically possible to fully document impacts that first took place more than a century ago as pre-diversion data does not exist. However, as discussed in Response #8 above, Section 4.2.1 of the EIS and the HSHEP model (Appendix A to the EIS) analyzes a no diversion scenario (termed the Natural Condition). The upper boundary (the Natural Condition) provides context to the maximum number of HU

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available for native species. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat for native stream species.

Comment 14: *Mahi Pono plans to use the total amount of East Maui Stream water available, including any “water reservation” held by the Department of Hawaiian Homelands (which has requested East Maui stream water for its projects). This is unacceptable and the EIS needs to show how this issue is being addressed for the future needs of Native Hawaiian for both housing and agriculture.*

Response 14: Your statement is incorrect. The Applicant fully acknowledges that, should the Water Lease be issued, the Department of Hawaiian Homelands (DHHL) has rights to reserve water for use on its homestead lands. Specific information regarding the DHHL's future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown on pages 2-4 to 2-7. As explained on pages 2-4 to 2-7 of the Final EIS, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water, CWRM could act on a reservation request related to a proposed lease.

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As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the Department of Land and Natural Resources' (DLNR) Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

While Mahi Pono's current farm plan assumes the full use of the water that can be diverted from East Maui streams after compliance with the CWRM D&O, Mahi Pono will be obligated to reduce elements of its farm plan, and thus the availability of crop, to accommodate the permanent reduction in available water resulting from DHHL's allocation. The Reduced Water Volume alternative described in Chapter 3 of the EIS provides an assessment of the impacts of less water being made available for the Proposed Action, including Maui Pono farm plan in the Central Maui agricultural fields. Specifically, consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

Note that Section 2.1.1 of the Draft EIS stated, with respect to the DHHL reservation, that "*Until that reservation is physically claimed, however, it will be available for use by the lessee.*" That statement has been clarified in the Final EIS as shown on pages 2-4 to 2-7, as it is uncertain whether the DHHL reservation amount would be available to the lessee until such time as it is needed by DHHL. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

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Please note that as discussed in Section 2.1.2 of the Draft EIS, under the Proposed Action, at full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd will be diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Comment 15: *The DEIS does not include any detailed summary of how stream flows will be measured and monitored above and below diversions and within the ditch systems by a non-bias third party (I.e. community members in conjunction with CWRM/USGS). There are now Interim Instream Flow Standards in effect for 10+ East Maui Streams and there are currently no monitoring systems in place to ensure that the law is being followed and that diverters are complying with them.*

Response 15: There are IIFS for all streams Statewide. The CWRM D&O served to amend the IIFS for 22 streams in East Maui. The IIFS are being met for all East Maui streams, as diversions of East Maui streams in the License Area are currently low, and most of the water remains in the streams, undiverted. Note that that as of October 2020, an average of 23.3 mgd was being diverted from License Area streams through the EMI Aqueduct System.

Regarding systems in place to ensure the law is being followed with respect to water diversions, under the revocable permits annual reports, and now quarterly reports, are submitted by EMI to the BLNR. Since the CWRM D&O was issued, however, EMI has been working closely with the CWRM staff on the implementation of the ordered IIFS. The IIFS are being met for all License Area streams.

Regarding your comment about stream measurements above and below diversions, it is not practically feasible to install gauging to achieve what you suggest. Nor is it necessary to ensure IIFS compliance. Note that EMI has 12 gauging stations located in several ditch locations across the License Area to monitor and manage East Maui ditch deliveries. These gauges measure the flow in the ditches only, using a system that includes optical encoders with float tape and data loggers. It is not feasible to measure flow in the streams, as there are limited areas that contain the necessary control points to accurately measure streamflow. EMI's 12 gauging stations include seven gauges that were formerly operated and maintained by the USGS to calculate the total amount of water diverted from each of the four sections of the License Area. Those gauges were also in the ditches, not on individual streams. Due to USGS cost cutting, in 1986 EMI took over the responsibility of operation and maintenance of those seven former USGS gauges. At that

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time, the state began assessing a flat rental fee rather than one based on the specific amount of water collected in each license area. EMI contracts with the USGS to conduct quarterly discharge measurements to verify the accuracy of the gauges at the Honopou boundary of the License Area, which measure the total water withdrawn from the Collection Area.

It is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. As noted in the CWRM D&O, Finding of Fact (FOF) 50, EMI takes measurements at the boundary of each section of the License Area and at its gauging station at Māliko Gulch. However, for the purpose of measuring the aggregate flow from entire License Area, the measurements taken at the Honopou boundary were used.

Comment 16: *One of the major things plaguing Nā Wai 'Ehā is the fact that corporations like Wailuku Water Co. and Mahi Pono similar to that of East Maui still have control of these diversion systems, capture 100% of the stream flows and release what is “required by law” below via the IIFS rulings. This poses major issues in terms of their ability to comply, follow the law and allowance for access to these areas for transparency.*

Response 16: We respectfully disagree with your comment. Even when sugar was in full production in Central Maui, it was estimated that the EMI Aqueduct System diverted only 15% of the total rainfall in the East Maui watershed. In addition, the Proposed Action will be compliant with the CWRM D&O that ordered significant restoration for several of the East Maui streams within the License Area as discussed throughout the Draft EIS. Water can only be diverted after the IIFS are met. Moreover, these compliance requirements must be satisfied irrespective of whether the Water Lease is issued.

Regarding your comment about transparency, EMI's use of surface water is regulated closely by the CWRM and the BLNR through the revocable permits for the water and will be under the proposed Water Lease, amongst other government agencies. The Proposed Water Lease is very much in the eye of regulators, with significant reporting and permitting requirements at the State and County level, as discussed in Response #15 above. Please note that the EIS process is a model of transparency. Furthermore, as discussed in Section 2.1 of the EIS, the Water Lease will be awarded through a public auction process.

Comment 17: *In addition, plantation era systems continue to allow for dry stream beds in-between diversions and IIFS points. This negatively impacts native aquatic species habitat and*

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their ability to migrate upstream. The DEIS does not include any detailed discussions on how these issues will be addressed in East Maui.

Response 17: Please note that under the Proposed Action, significantly less water will be diverted from East Maui streams in the License Area compared to how streams were diverted historically during sugarcane operations. Specifically, as discussed in Section 2.1.2:

The EMI Aqueduct System was designed and is intended to be operated to capture and convey a major portion of the base flow from streams in the License Area to supply the former sugarcane operations in Central Maui. The EMI Aqueduct System is not designed to capture and convey short periods of high streamflow known as freshets that occur when it rains heavily in the upslope areas of the watershed. Such larger flows quickly overtop or bypass the diversions and remain in the streams. The system will only divert up to the capacity of the ditches to convey slow moving water along the very slight slopes of the ditches. Up until 1986, when the first return of water was made to the East Maui streams, the long-term average delivery by the EMI Aqueduct System was 165 mgd (CWRM D&O, FOF 519) before any use of the water by the MDWS or HC&S. In 2001, the CWRM began the process toward its D&O for several East Maui streams that further changed the amount of water available for delivery to Upcountry Maui and to the Central Maui agricultural fields. Based on these changes to the system, a more recent history of flow deliveries from the EMI Aqueduct System was computed from 1987 to 2006 (20 year time period). When analyzing the delivery data at Honopou Stream and Maliko Gulch, the median (Q50) flow at these areas for this time period was 135.58 mgd at Honopou Stream and 146.64 mgd at Maliko Gulch (Akinaka, 2019).

Compliance with the June 2018 CWRM D&O requires modifications to many of the stream diversion works that are part of the EMI Aqueduct System. Streams requiring partial restoration of flow have required adjustments to their diversions. Full stream flow restoration has required closure of the stream diversions. These compliance requirements must be met irrespective of whether the Water Lease is issued. East Maui, specifically the License Area, has already been affected by increased stream flows resulting from less offstream diversions due to the closure of sugar operations in December 2016. Currently, the EMI Aqueduct System is only diverting approximately 20 mgd. As a result, very little surface stream water is currently being diverted relative to what would be allowed should the Water Lease be awarded per the Proposed Action. However,

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the amount of water that may be diverted should the Water Lease be issued is substantially less than the amount that was diverted during normal sugar production. For example, in 2006 it is estimated that the EMI Aqueduct System delivered approximately 156.69 mgd at Maliko Gulch, whereas under the CWRM D&O, it is estimated that the delivery at Maliko Gulch will be approximately 92.32 mgd (Akinaka, 2019).

The median flow required by the CWRM D&O provides an estimated available median flow at Honopou Stream of 87.95 mgd, where the EMI Aqueduct System leaves the License Area. Beyond the License Area, the diverted streams only provide supplemental ditch flow when License Area diversions are low. The amount that can be added is relatively low because when rainfall is high in East Maui, the ditches are fuller and there is little needed to supplement the flow. And, when rainfall is low in East Maui, the streams west of Honopou Stream have less flow in them as they are in an area that receives less rainfall than areas further east. During drier (low flow) periods, it is estimated that 4.37 mgd is available to supplement the EMI Aqueduct System between Honopou Stream and Maliko Gulch. With this added flow, the estimated median flow available beyond Maliko Gulch for use in Upcountry Maui and the Central Maui fields is estimated to be 92.32 mgd (Akinaka, 2019).

As discussed in Response #16 above, water can only be diverted from the License Area streams after the IIFS are met. All compliance requirements must be satisfied irrespective of whether the Water Lease is issued.

Regarding your comment about impacts to native aquatic species that need to migrate upstream, this is included in the HSHEP model (Appendix A to the EIS) summarized in Section 4.2.1 of the Draft EIS. As discussed in Response #7 above, the two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comeingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped. Moreover, as discussed in Response #10 above, under the Proposed Action there is expected to be an approximate 36.1% reduction in potential HU from the theoretical Natural Flow Condition (i.e. no diversions), which include the native aquatic species, within the License Area.

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Regarding your comment that the Draft EIS, “*does not include any detailed discussions on how these issues will be addressed in East Maui*” note that mitigation measures are described in Section 4.2.1 of the Draft EIS, which states:

Even with stream flow restoration and creation of wetted pathways to the ocean, entrainment of larvae at the diversions remains an issue and contributes to the loss of HU. Additional HU may be gained for the native stream species by decreasing entrainment at the diversion locations. Any action or modification of the diversion to decrease entrainment would increase the total restored HU without any additional water released to the stream.

Hence, making modifications to diversions so that entrainment is eliminated or reduced, can increase the number of HU, as well as improve connectivity within the stream for aquatic species. As discussed in Response #10 above, however, there are numerous reasons why there could be HU available, but no presence or a lesser presence of stream life. Please note that the impacts and mitigation measures discussed in Section 4.2.1 of the Final have been expanded on as shown on pages 4-63 to 4-67.

Comment 18: *Furthermore, there is a need for collective engagement between CWRM, community members, kuleana kalo farmers, State and A&B-Mahi Pono which never seems to happen let alone the fact that this was not addressed in the DEIS as an important factor in addressing connectivity, compliance and enforcement issues. These points need to be strongly considered in the Final EIS.*

Response 18: Regarding your comment about collective engagement, the Social Impact Assessment (SIA), as well as Section 4.7.2 of the EIS recommends the establishment of a “Core Working Group” comprised of geographic communities, environmental, agriculture, and business interests, and public agencies. The group would serve as a forum for exchanging ideas and collaborative efforts, as well as provide feedback and suggestions to Mahi Pono. Each member of the Core Working Group would be expected to reach out to their own networks to extend the discussion beyond the Core Working Group. While there would likely be strong differences in perspectives and opinions, the Core Working Group would need to find ways to establish core principles, common ground and manageable solutions. However, the terms of the Water Lease are at the discretion of the BLNR.

Additionally, Section 4.6 and Appendix F (CIA) of the EIS recommend that any future amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices and beliefs be fully vetted with the potentially affected community by engaging

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relevant stakeholders in discussion in order to keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

Should the BLNR make this a requirement as a part of the Water Lease conditions, the applicant will comply with all conditions of the Water Lease.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Jeffrey Parker <jeffy3@earthlink.net>
Sent: Thursday, November 7, 2019 2:35 PM
To: Public Comment
Subject: Comment on Water Lease Draft Environmental Statment
Attachments: DEIS Water Comments 11-7.docx

Dear Mr Matsukawa,

Please find my brief comments attached in Word format.

Thank you for the opportunity to comment. Thank you for all your hard work and for making the very useful information available to the public.

Aloha

Jeffrey Parker

(Page 1)

To: Mr. Ian Hirokawa, Mr. Earl Matsukawa

11-5-19

Re: DEIS for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas

From: Jeffrey Parker

President, Tropical Orchid Farm, Inc

Huelo, Maui

P.O. Box 170

Haiku, HI, 96708

Dear Mr. Hirokawa and Mr. Matsukawa,

Thank you for the opportunity to comment on the DEIS.

Thank you for all your hard work and making the very useful information available to the public.

I do have concerns about several issues covered in the DEIS. I am a farmer, operating a successful farm in the study area of Huelo, using water from a stream in the study area, since 1976. I am a Member of Maui County Farm Bureau.

I. The EIS needs to examine in depth, other Alternatives, such as Alternative Lease Duration (3.2.2) Analysis of Project Alternatives 2-4 is woefully inadequate.

A. 3.2.2.1 Alternative Lease Duration. There are many other stream users that might be harmed by tying up the water and locking-in uses for the proposed 30 year period. Factors such as the threat of rapid climate change have changed the situation for instream users and uses. While the DEIS has an excellent discussion of climate change (4.3.1), it is not considered as a factor in reviewing the Alternative Actions.

1. My farm gets all of the water needed for its operation from a stream which is not one of the streams receiving restored flows under CWRM D&O. The stream running through my property is 100% diverted ¼ mile above my property at the Lowrie Ditch, and then diverted 100% again at the lower boundary of the property, at the New Haiku Ditch. The water flowing between the diversions is from seeps. While there has always been enough seepage to sustain us, there have been some dry periods lately where we were truly frightened. It is a new world now with Climate Change, and events around the World have shown that anything is now possible. Should our stream stop flowing between the diversions, I will need to ask that water be released from the Lowrie diversion. Because of the rapidly-changing climate situation, I believe that control of stream flows should not be locked-in for 30 years.

II. EIS should not unquestioningly rely on Mahi Pono's unproven plan or Mahi Pono's unsubstantiated data. Mahi Pono is an unproven idea. While their stated goals are attractive, they have no farming experience in Hawaii. It is clear that their proposals are experimental. As just one small example, their press release for the first plots to be available (those plots at the lowest elevation near the Puunene Mill) mentioned that one

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(cont.) crop will be potatoes. Farmers up in Kula, who grow potatoes, are laughing at this proposal and insist that potatoes will not be successful down at that elevation. In any case, there is no proof that any of the crops mentioned can succeed in that harsh, depleted environment. So, in actuality most of these crops are being floated as trial balloons. There is quite a lot of water available to Mahi Pono right now, at a minimum the water from the privately-owned A&B watershed lands, plus brackish, plus Na Wai Eha water. (Incidentally, even though not a part of the 30-year lease proposal, the DEIS should include analysis of, and factor in, the Na Wai Eha water that is used to irrigate 4000 acres in the Central Valley) Sugar is one of the thirstiest known crops, other crops should require far less water.

Additionally, there is unlikely to be enough entrepreneurs wanting to take advantage of the lease plots to be offered by Mahi Pono. From my view as an aging farmer, the biggest obstacles to expanding diversified ag I see, are: lack of interest in farming, lack of interest in hard physical labor, low pay and benefits, high cost of materials, exposure to and cost of chemicals, the need to dedicate one's entire life, etc. Since Mahi Pono is a speculative venture, with no track record, and because there is adequate water for them right now, I think it is misguided to rely on the MT venture as a prime justification for returning to the 30-year lease.

I question the conclusion that "a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment" because as I said, there actually is plenty of water available for Mahi Pono to get started, and it makes complete sense to require them to prove their venture before taking the very serious action of returning to the former 30-year lease, IF the MP venture is to be used as a prime justification. "A short-term lease would derail development of the Mahi Pono farm plan because of the risk of not being able to farm for a long enough period to recover their planned investment" (2.1.5) However, Mahi Pono was well-aware of the current year-to-year water lease when they made the decision to buy the land.

A. Farm Plan Table 2-1. EIS should cite the sources for the information, i.e., the amount of water needed for the proposed crops. How were these numbers arrived at? If no sources other than MP can be cited, then the acreage, crops and water requirements appear to be purely speculative. For comparison, applicants bidding for diversified ag State Lease Lands, must submit very detailed farm and business plans, with detailed substantiation of numbers. Those applications are then reviewed by a committee made up of a banker, a Dept. of Ag official, and DLNR officials. Why would information used to decide these momentous water leases not be subjected to the same rigor as for a small State lease?

1. Formerly, pasture lands leased to cattlemen were unirrigated. But under MP farm plan, 4700 acres will be irrigated, using, according to their numbers, 5.46 MGD or 6.63% of the total. Will other cattlemen be able to lease irrigated pasture from MP, or is the irrigated pasture planned for MP's own use?

III. EIS needs to study whether the super-low cost of water provided to Mahi Pono will unfairly disadvantage other ranchers and farmers outside of Mahi Pono. For example, a rancher wishing to irrigate a pasture will pay \$1.10 per 1000 gallons, whereas Mahi Pono will pay below \$.06 per 1000 gallons. This would cause independent ranchers raising high-quality

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(cont.) beef to be unable to compete. This same concern applies to all farming outside of Mahi Pono where farmers are paying the \$1.10 ag rate.

IV. (4.7.4 EIS should stress that several East Maui farms, such as my own, are dependent on the 13 streams not included in the CWRM D&O. DEIS states “In the past, farmers in East Maui have reported that surface-water diversions to supply water to Central Maui left insufficient water in the streams for them to take full advantage of the agricultural potential in East Maui. However, in light of the CWRM D&O, ample stream water should now be available”. Clearly, this statement does not cover uses and users on the 13 streams not included in the CWRM D&O.

V. EIS should detail how Mahi Pono will be included in the Watershed Management Plan, since they are not the Lessee. (2.2) “Under the Proposed Action, it is anticipated that EMI and/or Mahi Pono will continue to pursue watershed management activities”. This is important to me as a farmer and a subject-area stream user battling invasive species constantly. There is no question that not nearly enough has been done on this front, under the present WMP.

VI. EIS should examine closer whether the idea that there are no further impacts because the streams have already been diverted for over a hundred years is the best policy for the future of the watershed. Should a different standard be used, one that supports restoration of watershed health?

VII. EIS should re-examine section on Irretrievable and Irreversible Commitment of Resources. (Executive Summary xi.)

“The issuance of the Water Lease will not result in the irreversible use of the water resource because the Water Lease will be for a term, and not perpetual”. The EIS should back this claim up with opinions from legal and planning subject-matter-experts. For example, if water uses continue to grow and become increasingly dependent on these diversions, does that not defacto convey rights to those uses, so that in reality the resources will be irretrievable and irreversible?

Mahalo
Jeffrey Parker



WILSON OKAMOTO
 CORPORATION
 INNOVATORS • PLANNERS • ENGINEERS

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 September 3, 2021

Mr. Jeffrey Parker
 Tropical Orchid Farm, Inc
 P.O. Box 170
 Haiku, HI 96708

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Jeffrey Parker:

Thank you for comments dated November 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Thank you for the opportunity to comment on the DEIS. Thank you for all your hard work and making the very useful information available to the public. I do have concerns about several issues covered in the DEIS. I am a farmer, operating a successful farm in the study area of Huelo, using water from a stream in the study area, since 1976. I am a Member of Maui County Farm Bureau.*

Response 1: We acknowledge that you have concerns over several issues presented in the subject Draft EIS and you are a farmer in the Huelo region using water from a stream that is within the License Area. We also note that you are a member of the Maui County Farm Bureau.

Comment 2: *The EIS needs to examine in depth, other Alternatives, such as Alternative Lease Duration (3.2.2) Analysis of Project Alternatives 2-4 is woefully inadequate.*

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A. 3.2.2.1 Alternative Lease Duration. There are many other stream users that might be harmed by tying up the water and locking-in uses for the proposed 30 year period. Factors such as the threat of rapid climate change have changed the situation for instream users and uses. While the DEIS has an excellent discussion of climate change (4.3.1), it is not considered as a factor in reviewing the Alternative Actions.

Response 2: Your comment about many other stream users that may be harmed is unclear as you do not specify what stream users would be impacts (i.e., recreational users, cultural practitioners, taro farmers, etc.). However, please note that with respect to the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the Proposed Action relating to the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts to known existing and reasonably foreseeable future users, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai'i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

Regarding your comment that climate change has changed the situation for instream users and uses, as you acknowledge climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream

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base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action as well as the alternatives to the Proposed Action specific to the three geographic areas discussed in the Draft EIS as addressed in Section 3.4.7 (Natural Hazards), which discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Hence, climate change was used to assess the various alternatives presented in Chapter 3. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the Archaeological Literature Review and Field Inspection (LRFI) (Appendix E), Cultural Impact Assessment (CIA) (Appendix F), and the Terrestrial Flora and Fauna Technical Report (Appendix C) conducted in conjunction of this EIS as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Please note that the Alternative Lease Duration alternative was considered but ultimately dismissed as Section 3.2.2.1 of the Draft EIS explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless described in Section 3.2.2.1 and fully analyzed across the spectrum of environmental criteria in Section 3.4 of the EIS. In addition, a summary table comparing the various alternatives, as well as the No Action alternative, has been added as Table 3-2 to Section of the Final EIS as pages 3-49 to 3-80. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be

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hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan. A lease term shorter than 30 years could limit the ability of Mahi Pono or one of its farming lessees to establish diversified agriculture in Central Maui. The infrastructure and land management necessary to support a diversified agriculture farm plan is different from what was necessary for sugar cane, and thus requires significant infrastructure improvements and land preparation. Given the considerable time and expense it takes to develop a diversified farm plan such as the one Mahi Pono is proposing, a shorter-term water lease would likely result in a reduced range of crops, and the reduced cultivation of designated Important Agricultural Lands (IAL) in Central Maui. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

Comment 3: *My farm gets all of the water needed for its operation from a stream which is not one of the streams receiving restored flows under CWRM D&O. The stream running through my property is 100% diverted ¼ mile above my property at the Lowrie Ditch, and then diverted 100% again at the lower boundary of the property, at the New Haiku Ditch. The water flowing between the diversions is from seeps. While there has always been enough seepage to sustain us, there have been some dry periods lately where we were truly frightened. It is a new world now with Climate Change, and events around the World have shown that anything is now possible. Should our stream stop flowing between the diversions, I will need to ask that water be released from the Lowrie diversion. Because of the rapidly-changing climate situation, I believe that control of stream flows should not be locked-in for 30 years.*

Response 3: We acknowledge your comments and understand that the stream that your farm operates on in the Huelo region is not subject to the Commission on Water Resource Management's (CWRM) Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O). However, you do not provide specificity to which stream this is, thus we cannot provide a specific response. We acknowledge that the

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CWRM did not amend the existing Interim Instream Flow Standards (IIFS) for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu‘u, Ka‘aiea, ‘O‘opuola, Puehu, Nāili‘ilihaele, Kailua, Hanahana, Hoalua, Waipi‘o, Mokupapa and Ho‘olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration status); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe‘e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area.

With regards to your comment about a water lease term of 30 years being too long, please refer to Response #2 above which discusses the reasons why a 30-year lease term is necessary and being requested under the Proposed Action.

With regards to your comment about climate change, as discussed in Response #2 above, climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai‘i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Hence, climate change was used to assess the various alternatives presented in Chapter 3. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

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Moreover, as discussed in Section 2.1.2 of the Draft EIS, under the Proposed Action, at full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd will be diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Comment 4: *EIS should not unquestioningly rely on Mahi Pono's unproven plan or Mahi Pono's unsubstantiated data. Mahi Pono is an unproven idea.*

While their stated goals are attractive, they have no farming experience in Hawaii. It is clear that their proposals are experimental.

Response 4: Your comment about Mahi Pono's farm plan being an unproven idea is unclear. However, please note that Mahi Pono has been farming the Central Maui agricultural fields since they purchased A&B's former sugarcane land in December 2018 and has been expanding its agricultural operations since then. It is acknowledged that Mahi Pono is a new entity that has been recently formed with the goal of operating a large diversified agriculture farm in Hawai'i. However, in its first 18 months of existence, Mahi Pono has hired over 200 workers from Maui, most of whom have farm experience on the island. In addition, Mahi Pono's management has significant experience cultivating diverse crops on more than 100,000 acres on the continental U.S. Also, the company has established market channels, and substantial financial resources. The Mahi Pono farm plan is discussed not only in the Executive Summary, but in detail in Section 2.1.4. and Section 4.7.4, as well as Appendix I. Water requirements for 2030 (i.e., when full build out of the farm plan is expected) are discussed in Subsection 9.a of Appendix I, with details provided in Table 3, Section 3.a of Appendix I. This table includes average daily per-acre water requirements by crop. Production figures are discussed in Subsection 10.a, with details provided in Table 4, Section 4.a of Appendix I.

The Mahi Pono farm plan will evolve over time based on a number of factors, including the available supply of surface water, experience which will be gained on crops that grow well in Central Maui, crops that are profitable, the size of the market for profitable crops, etc.

Comment 5: *As just one small example, their press release for the first plots to be available (those plots at the lowest elevation near the Puunene Mill) mentioned that one crop will be potatoes. Farmers up in Kula, who grow potatoes, are laughing at this proposal and insist that potatoes will not be successful down at that elevation. In any case, there is no proof that any of*

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the crops mentioned can succeed in that harsh, depleted environment. So, in actuality most of these crops are being floated as trial balloons.

Response 5: The crops in the Mahi Pono farm plan were chosen with the goal of increasing Hawai'i's food independence while also meeting criteria for commercial viability and potential. Many crops can be grown in Hawai'i, but relatively few can be grown at a scale and cost that compete with low-cost volume producers on the mainland, Mexico and elsewhere. For many crops, the Hawai'i market is too small for economies of scale, and shipping costs and delivery times are a disadvantage for exports. The Mahi Pono farm plan is a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community.

With regards to your comment about Central Maui being a harsh, depleted environment, as summarized in Section 4.7.4 of the Draft EIS and Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts):

Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

The basis for this finding is given in Subsection 5 of Appendix I of the Draft EIS, along with Figures 4 to 12 in Appendix I of the Draft EIS.

Moreover, as discussed in Section 5 of Appendix I and Section 4.7.4 of the Draft EIS, the overwhelming majority of the Central Maui agricultural fields (approximately 80%) are rated by the UH Land Study Bureau (LSB) as having the highest Overall Productivity Rating of "A" (on a scale of "A" to "E" with "E" being the lowest soil rating), and a little over 11% has a "B" rating. In other words, about 27,567 acres (90.9%) are high-quality lands rated A or B. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Classification System, developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), and the College of Tropical Agriculture, University of Hawai'i. Approximately 25,669 acres of the Central Maui agricultural fields are classified under the ALISH system as "Prime", which means "agricultural land which is land that is best suited for the production of crops because of its ability to sustain high yields with relatively little input and with the least damage to the environment." Also, as discussed in Section 5.1.4 of the EIS and Section 5 of Appendix I, approximately 22,000 of the 30,000 acres of

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agricultural fields in Central Maui are designated as IAL. Under Article XI, Section 3, of the Constitution of Hawai‘i, the State is required to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. HRS Chapter 205, § 205-41 through § 205-52, provides for the designation of IAL. As stated in HRS Chapter 205: “*The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations.*” IAL designation facilitates the long-term dedication of lands for future agricultural use so long as there is a sufficient supply of water to allow for profitable farming. Hence, Central Maui offers some of the best agricultural land in the State.

Comment 6: *There is quite a lot of water available to Mahi Pono right now, at a minimum the water from the privately-owned A&B watershed lands, plus brackish, plus Na Wai Eha water. (Incidentally, even though not a part of the 30-year lease proposal, the DEIS should include analysis of, and factor in, the Na Wai Eha water that is used to irrigate 4000 acres in the Central Valley) Sugar is one of the thirstiest known crops, other crops should require far less water.*

Response 6: With regards to your comment about utilizing water from Nā Wai ‘Ehā, please note this water is from the West Maui irrigation system. Water from the West Maui irrigation system is beyond the scope of the EIS. That water does not contribute to the irrigation of the Central Maui agricultural fields. The EIS looks at the water diverted from East Maui streams through the EMI Aqueduct System, a portion of which water is delivered to the Central Maui agricultural fields. The EMI Aqueduct System does not comingle water with the West Maui irrigation system as they are completely separate systems. Moreover, the source of water for the West Maui irrigation system comes from privately owned lands and is not from State-owned lands. Hence, the West Maui water is not included in this analysis.

Regarding your comment that there is a lot of water available to Mahi Pono right now, please note that Section 2.1.4 of the Final EIS has been revised to reflect Mahi Pono's current and near-term expected water use, which details average water being diverted from East Maui streams through the EMI Aqueduct System and how that water will be used. As discussed on pages 2-30 and 2-32 of Section 2.1.4, based on the planned estimates, Mahi Pono projected that its total water needs from the East Maui watershed/streams over the course of 2021 would be approximately 32.3 mgd. The 2021 revocable permits cap water withdrawals from the License Area at 45 mgd on an annual average basis. However, in order to implement the full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd of surface water is needed from the License Area. The EMI Aqueduct System is estimated to divert an additional 4.37 mgd of surface water from the point that it leaves the License Area at Honopou Stream and

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collects water from streams on privately owned land to its last diversion at Māliko Gulch. Thus, under the Proposed Action, an estimated total of approximately 92.32 mgd could be conveyed to supply the MDWS for users in Upcountry Maui and the agricultural fields in Central Maui as discussed in Section 2.1.2 of the Final EIS. Hence the amount of surface water available to Mahi Pono currently is approximately less than half of what is needed to implement the full buildout of the Mahi Pono farm plan.

With regards to A&B's privately owned watershed land, as discussed in Section 3.3 of the Draft EIS, under the 1938 Agreement and a related calculation involving isohyet analysis of rainfall patterns, it is understood that approximately 30% of the water in the License Area streams is derived from the privately-owned lands. Therefore, under the No Action alternative, the EMI Aqueduct system could continue to divert approximately 30% of the water available from the License Area plus approximately 4.37 mgd from the privately owned lands between Honopou Stream and Māliko Gulch. This amount is estimated to be approximately 30.76 mgd.

With regards to brackish water, Draft EIS Section 2.1.4 (Central Maui Field System) explains:

In addition to the surface water imported from the EMI Aqueduct System to the Central Maui field irrigation system, the irrigation infrastructure includes fifteen brackish water wells that can supplement surface water to approximately 17,200 acres of the plantation at the lower elevations (CWRM D&O, FOF 738). These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739).

Draft EIS Figure 2-5 (Central Maui Infrastructure Map) identifies the wells in the Central Maui agricultural fields. However, please note that Section 2.1.4 has been revised in the Final EIS to more accurately describe the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono and clarifies that only 10 of the 15 wells are on Mahi Pono lands and thus available for use by Mahi Pono.

The reference to 15 brackish wells was derived from the CWRM D&O, FOF 738, as that was the number of brackish wells that A&B utilized during its sugar cane operations. However, one of the 15 wells referred to, State Well No. 5128-002, does not serve the Central Maui agricultural fields and four of the other brackish wells are on lands that are not owned by Mahi Pono. As such, Mahi Pono has access to only 10 such wells. Draft EIS Figure 2-5 has been revised to more

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accurately depict the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields.

During sugarcane operations, the combined pumping capacity of A&B's 15 brackish water wells was 228 mgd of brackish water, but the true instantaneous pumping capacity of the wells – the most that can be pumped over 3 to 5 days – was 115 mgd during sugar cultivation, after which sump levels started to decline. From 1986 to 2013, A&B pumped an average of 71 mgd from the brackish water wells; during the 2008-to-2013 period, these wells delivered about 70 mgd of brackish groundwater to the lower-elevation fields. This was a suitable source of water for sugarcane during droughts because sugarcane can tolerate periodic use of water with higher salinity levels.

With respect to the Mahi Pono farm plan, because of the salinity of the water from the brackish wells and the salt tolerance of diversified agricultural crops, which are less salt-tolerant than sugarcane, the use of brackish water on the lower fields is assumed to be limited to about 30% of the water applied. Combining the upper and lower fields, the overall water split across all 30,000 acres would be approximately 80% surface water and 20% brackish groundwater water. If insufficient water is available from the EMI Aqueduct System, then crop farming will have to be reduced no matter how much brackish water is available. Thus, we disagree with your statement that the brackish wells provide 'a lot of water'. Additionally, the sustainable yield of the underlying aquifers as well as the quality of water are uncertain in light of the fact that significantly less recharge of the Central Maui aquifers from imported East Maui waters will occur. Historically, the sustainable pumping capacity of these wells was highly dependent on irrigation recharge and the positive benefits to the underlying aquifers.

Comment 7: *Additionally, there is unlikely to be enough entrepreneurs wanting to take advantage of the lease plots to be offered by Mahi Pono. From my view as an aging farmer, the biggest obstacles to expanding diversified ag I see, are: lack of interest in farming, lack of interest in hard physical labor, low pay and benefits, high cost of materials, exposure to and cost of chemicals, the need to dedicate one's entire life, etc. Since Mahi Pono is a speculative venture, with no track record, and because there is adequate water for them right now, I think it is misguided to rely on the MP venture as a prime justification for returning to the 30-year lease.*

Response 7: With regards to your comment about entrepreneurs wanting to take advantage of the lease plots, please note that Mahi Pono plans to lease approximately 2,050 acres to other farmers at favorable terms, including relatively low rents (anticipated to be \$150 per acre per year for community farms) for long periods. These farmers will have access to low-cost non-potable water from the Central Maui Field Irrigation System.

At full operations of the Mahi Pono farm plan, currently estimated to occur around 2030, an estimated 790 farming and crop-processing jobs will be provided in Central Maui (direct jobs)

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(about 160 more jobs than provided by HC&S sugar operations in 2006). As explained in Section 4.7.4:

The increase in employment would be gradual, with most jobs filled by former sugarcane workers, skilled workers from Maui and other islands, recent graduates of agricultural-schools and colleges, and unskilled workers who would receive on-the-job training.

Approximately an additional 227 indirect jobs on Maui will be generated by the purchase of goods and services, for a total exceeding 1,000 new jobs on Maui. Hiring workers will be spread out over a number of years as fields are planted, orchards mature, processing facilities are built, etc. Assuming 10 years to reach full operations, direct employment on Maui will increase by an average of about 80 jobs per year, while total direct and indirect jobs will increase by an average of about 100 jobs per year. The latter figure is less than 8% of the 1,270 annual job increase projected for the years 2020 to 2030 by the State for the County of Maui (DBEDT, "Population and Economic Projections for the State of Hawai'i to 2045, June 2018).

In its first 18 months of existence Mahi Pono had hired over 200 workers, all of whom were living on Maui when hired. They were attracted by the type of work, wages and benefits.

Based on past hiring, nearly all future employees are expected to come from Maui. Also, at least in the near-term, attracting workers should be easier than in the recent past because of the long-term adverse economic effects of COVID-19 on tourism and Maui's economy. It may take years to rebuild the economy, and the Mahi Pono farm plan will contribute significantly to this rebuilding.

Comment 8: *I question the conclusion that "a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment" because as I said, there actually is plenty of water available for Mahi Pono to get started, and it makes complete sense to require them to prove their venture before taking the very serious action of returning to the former 30-year lease, IF the MP venture is to be used as a prime justification.*

Response 8: As noted in Response #2 above, Section 3.2.2.1 of the Draft EIS explains that "a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability." The Alternative Lease Duration alternative is nevertheless fully analyzed across the spectrum of environmental criteria in Section 3.4 of the EIS. In addition, a summary table comparing the various alternatives, as well as the No Action alternative, has been added as Table 3-2 to Section 3.5 of the Final EIS as pages 3-49 to 3-80. The Agricultural and Related Economic Impacts report provided as Appendix I to the

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Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water. Furthermore, as discussed in Response #2, a lease term shorter than 30 years could limit the ability of Mahi Pono or one of its farming lessees to establish diversified agriculture in Central Maui as the infrastructure and land management necessary to support a diversified agriculture farm plan is different from what was necessary for sugar cane, and thus requires significant infrastructure improvements and land preparation.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Regarding your comment that Mahi Pono already has plenty of water to get its farm plan started, please refer to Response #6. Moreover, Mahi Pono has been implementing a portion of its farm plan with water that has been available to Mahi Pono under yearly revocable permits as explained in Response #6 above and discussed in Section 2.1.4 of the EIS, based on the planned estimates, Mahi Pono projected that its total water needs from the East Maui watershed/streams over the course of 2021 would be approximately 32.3 mgd. The 2021 revocable permits cap water withdrawals from the License Area at 45 mgd on an annual average basis. However, in order to implement the full buildout of the Mahi Pono farm plan, it is estimated that

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approximately 87.95 mgd of surface water is needed from the License Area. The EMI Aqueduct System is estimated to divert an additional 4.37 mgd of surface water from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Māliko Gulch. Thus, under the Proposed Action, an estimated total of approximately 92.32 mgd could be conveyed to supply the MDWS for users in Upcountry Maui and the agricultural fields in Central Maui as discussed in Section 2.1.2 of the Final EIS. Hence the amount of surface water available to Mahi Pono currently is approximately less than half of what is needed to implement the full buildout of the Mahi Pono farm plan.

Comment 9: *A short-term lease would derail development of the Mahi Pono farm plan because of the risk of not being able to farm for a long enough period to recover their planned investment” (2.1.5) However, Mahi Pono was well-aware of the current year-to-year water lease when they made the decision to buy the land.*

Response 9: As discussed in Responses #2 and #8 above, Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return the 30,000 acres of agricultural lands in Central Maui back to a sustainable diversified farming operation. Mahi Pono conducted proper due diligence and is aware of the risks when purchasing approximately 41,000 acres from A&B.

Furthermore, the State of Hawai‘i has been clear that the annual revocable permits cannot continue indefinitely. As discussed in Section 1.4 of the Draft EIS, by order dated July 8, 2016, the Board of Land and Natural Resources (BLNR) directed A&B to proceed with the preparation of an EIS in connection with a long-term water lease.

Comment 10: *Farm Plan Table 2-1.*

EIS should cite the sources for the information, i.e., the amount of water needed for the proposed crops. How were these numbers arrived at? If no sources other than MP can be cited, then the acreage, crops and water requirements appear to be purely speculative.

Response 10: The Mahi Pono farm plan was developed by agricultural and technical experts. As noted in Response #4 above, the Mahi Pono farm plan is discussed not only in the Executive Summary, but in detail in Section 2.1.4. and Section 4.7.4, as well as Appendix I (Agricultural and Related Economic Impacts) of the EIS. Water requirements for 2030 are discussed in Subsection 9.a of Appendix I, with details provided in Table 3, Section 3.a of Appendix I. This table includes average daily per-acre water requirements by crop. Production figures are discussed in Subsection 10.a, with details provided in Table 4, Section 4.a of Appendix I.

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Comment 11: *For comparison, applicants bidding for diversified ag State Lease Lands, must submit very detailed farm and business plans, with detailed substantiation of numbers. Those applications are then reviewed by a committee made up of a banker, a Dept. of Ag official, and DLNR officials. Why would information used to decide these momentous water leases not be subjected to the same rigor as for a small State lease?*

Response 11: We acknowledge your comments. However, please note that that the Proposed Action is not for a State Land Lease but, rather a Water Lease. Mahi Pono's agricultural operations are taking place entirely on privately owned land and is not subject to the same requirements as agricultural operations that take place on State Land Leased areas. Moreover, please note that Chapter 2 of the EIS provides rigorous details regarding the use of the water under the Proposed Action and how it would be used. With regards to the Mahi Pono farm plan, the EIS explains that at full operation (which is anticipated by 2030), the Mahi Pono farm plan will utilize approximately 30,000 acres in Central Maui. Section 2.1.4 of the Draft EIS state:

- *That total amount of water will be delivered to approximately 30,000 acres. Of those 30,000 acres:*
 - *Approximately 15,950 acres would be used for farming, including 12,850 acres for orchard crops and 3,100 acres for other crops.*
 - *Approximately 13,800 acres would be used for pasture, of which about 4,700 acres would be irrigated.*
 - *Approximately 250 acres would be used for green energy, such as a solar farm.*

Because there is insufficient surface water to support the entire farm plan, brackish groundwater will also be used. . .

This farm plan would consist of the following:

- *Approximately 20,650 acres of irrigated farm land, including 12,850 of orchard crops, 600 acres of tropical fruit, 1,200 acres of row and annual crops, in addition to a community garden and limited non-GMO energy crops.*
- *Approximately 13,800 acres of cattle pasture, comprised of 4,700 acres of irrigated pasture, and 9,100 acres of unirrigated pasture. This should fit the proposed model of grass-finishing on irrigated pasture. The unirrigated acreage is less than 10,000 acres, which helps ensure that that the entire area devoted to unirrigated pasture will remain productive.*

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However, please note that Table 2-1 of the Draft EIS (Table 2-2 of the Final EIS) that was incorporated into Section 2.1.4 has been updated with more precise water usage numbers.

Comment 12: *Formerly, pasture lands leased to cattlemen were unirrigated. But under MP farm plan, 4700 acres will be irrigated, using, according to their numbers, 5.46 MGD or 6.63% of the total. Will other cattlemen be able to lease irrigated pasture from MP, or is the irrigated pasture planned for MP's own use?*

Response 12: You are correct that as shown by Table 2-1 of the Draft EIS (Table 2-2 in the Final EIS) that approximately 4,700 acres of land is planned for irrigated pasture use which is estimated to require approximately 5.46 mgd of both surface and groundwater use. Please note that this is intended for Mahi Pono agricultural operations and will not be leased. It should be noted that Mahi Pono plans to lease approximately 2,050 acres to other farmers at favorable terms, including relatively low rents (anticipated to be \$150 per acre per year for community farms) for long periods. These farmers will have access to low-cost non-potable water from the Central Maui Field Irrigation System.

Comment 13: *EIS needs to study whether the super-low cost of water provided to Mahi Pono will unfairly disadvantage other ranchers and farmers outside of Mahi Pono.*

For example, a rancher wishing to irrigate a pasture will pay \$1.10 per 1000 gallons, whereas Mahi Pono will pay below \$.06 per 1000 gallons. This would cause independent ranchers raising high-quality beef to be unable to compete. This same concern applies to all farming outside of Mahi Pono where farmers are paying the \$1.10 ag rate.

Response 13: Please note that the Mahi Pono farm plan, as discussed in Response #5 above, is a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community.

Also note that Mahi Pono has individually met with several members of the Maui County Council. Mahi Pono has also had various meetings with community groups such as Go Maui, Maui Tomorrow, Mā'alaea Community Association, Pukalani Community Association, and the Alliance of Maui Community Associations regarding the Mahi Pono farm plan and use of water from East Maui streams, and conducted farm tours with members of the community.

Your comment about that Mahi Pono will pay \$0.06 per kgal is incorrect. Please note that as discussed in Section 4.7.3 of the Draft EIS, the rate MDWS currently pays to EMI for water is

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\$0.06 per kgal. However, it is anticipated that the delivery costs to the County of Maui will increase, the exact amount of the increase cannot be known until the Water Lease is finalized. However, the estimate analyzed in the Draft EIS assumed a year 2030 water service fee rate of \$0.08 per kgal. This figure was calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, the MDWS would pay an estimated \$214,600 per year to EMI. However, please note that this discussion in Section 4.7.3 of the Final EIS has been updated to take into account the latest equivalent per unit cost under the latest revocable permit as. As it relates to how much EMI pays to divert water, as discussed in Section 4.7.3 of the Final EIS, the revocable permit rent established by the BLNR in November 2020 for calendar year 2021 was \$238,362, which represents an increase from the rent that was historically paid. Assuming 32.3 mgd is diverted under the 2021 revocable permit, the Water Lease rent rate would translate to \$0.019 per thousand gallons. This rate of \$0.019 is assumed as the basis for the future annual Water Lease payment to the DLNR. However, the actual Water Lease rental amount will be based on an appraisal conducted prior to issuance of the Water Lease which is within the purview of the BLNR as required under HRS Chapter 171. Should the Water Lease amount be higher or lower, the operational costs of the EMI Aqueduct System would be adjusted accordingly.

In the State of Hawai'i, County water systems were designed primarily to supply potable water to homes and businesses. Much of this is groundwater which is expensive to pump to higher elevations, and some is surface water which is expensive to treat for safety. Also, the water is delivered via buried water mains and pipes, and often pumped to enclosed tanks at elevations sufficient to provide adequate water pressure to users.

In contrast, most agricultural water systems were designed to supply large volumes of untreated surface water to farms, or brackish groundwater from wells having a short lift. This water is often delivered in open ditches and stored in open reservoirs.

Development and operating costs for agricultural water systems and, correspondingly, agricultural water rates are generally lower than that for County systems. As a result, farmers who use County water are at a disadvantage compared to farmers who use water from agricultural water systems. This disadvantage exists Statewide and has existed for a century or more. The Mahi Pono farm plan will have an insignificant impact on this situation.

As noted in Response #12 above, Mahi Pono plans to lease approximately 2,050 acres to other farmers at favorable terms, including relatively low rents (anticipated to be \$150 per acre per year for community) for long periods. These farmers will have access to low-cost non-potable water from the EMI Aqueduct System.

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As it relates to ranchers, please note that most ranches rely on rainfall to supply water to their pastures. Except for small volumes of drinking water for the cattle, water rates are irrelevant for most ranches.

Comment 14: *4.7.4 EIS should stress that several East Maui farms, such as my own, are dependent on the 13 streams not included in the CWRM D&O.*

DEIS states “In the past, farmers in East Maui have reported that surface-water diversions to supply water to Central Maui left insufficient water in the streams for them to take full advantage of the agricultural potential in East Maui. However, in light of the CWRM D&O, ample stream water should now be available”. Clearly, this statement does not cover uses and users on the 13 streams not included in the CWRM D&O.

Response 14: We respectfully disagree with your comment that the EIS did not cover uses and users along the streams not subject to the CWRM D&O. Specifically, as discussed in Section 4.7.4 of the EIS, the East Maui farms included in the analysis took into account both taro farms and other farms that are, or could be, irrigated with water diverted from streams flowing through the License Area, including the communities between Honopou and Nahiku, which includes Huelo. Taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water

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to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS.

Comment 15: *EIS should detail how Mahi Pono will be included in the Watershed Management Plan, since they are not the Lessee. (2.2) “Under the Proposed Action, it is anticipated that EMI and/or Mahi Pono will continue to pursue watershed management activities”. This is important to me as a farmer and a subject-area stream user battling invasive species constantly. There is no question that not nearly enough has been done on this front, under the present WMP.*

Response 15: Section 1.3.1 of the EIS describes the current ownership of EMI, the proposed lessee under the Water Lease. EMI was previously a wholly owned subsidiary of A&B. As of February 2019, MP EMI, LLC became a co-owner of EMI. Mahi Pono's agricultural operations are centralized under Mahi Pono, LLC. MP EMI, LLC and Mahi Pono, LLC share the same parent company. Therefore, Mahi Pono will be involved in the watershed management plan should the Water Lease be issued to the applicant. As discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS.

With regards to your comment about the present watershed management plan, we assume that you are referring to the East Maui Watershed Partnership. The lands under the jurisdiction of the East Maui Watershed Partnership span over 100,000 acres which includes the entire License Area. The License Area is actively managed by the multiple agencies and organizations, including EMWP, Maui Invasive Species Committee (MISC), DLNR, etc., in partnership with EMI.

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In reviewing existing watershed management plans in general, however, DLNR has recently determined that some of the existing watershed plans are not always directly correlated to the water lease area and some plans are old and outdated. In certain places, new threats to watershed health are not addressed in existing watershed plans. Additionally, DLNR determined that estimated budgets in such existing plans may not reflect the current cost of management if the plan is over 5 years old. As such, DLNR will work with proposed water lessees to determine if any existing plan meets the minimum content requirements and sufficiently addresses the protection of watershed forests and freshwater resources in the License Area. If it does not, DLNR will work with the lessee to determine the specific actions needed and jointly develop a new plan or update the existing plan as noted above. It should be noted that the existence of a watershed management plan does not absolve a water lessees' duty to help with the implementation of management actions. A lessee must provide DLNR proof that it is already contributing to the protection of the watershed, and membership in a Watershed Partnership may not fulfill the requirement of implementation.

Comment 16: *EIS should examine closer whether the idea that there are no further impacts because the streams have already been diverted for over a hundred years is the best policy for the future of the watershed.*

Should a different standard be used, one that supports restoration of watershed health?

Response 16: Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream

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diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS.

With regards about your question about a different standard being used is unclear. However, as noted in Response #15 above, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and

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plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS.

Comment 17: *EIS should re-examine section on Irretrievable and Irreversible Commitment of Resources. (Executive Summary xi.)*

The issuance of the Water Lease will not result in the irreversible use of the water resource because the Water Lease will be for a term, and not perpetual”. The EIS should back this claim up with opinions from legal and planning subject-matter-experts. For example, if water uses continue to grow and become increasingly dependent on these diversions, does that not defacto convey rights to those uses, so that in reality the resources will be irretrievable and irreversible?

Response 17: Please note as explained in Chapter 6 of the Draft EIS:

An irreversible or irretrievable commitment of resources refers to impacts on or losses to resources that cannot be recovered or reversed. Examples include permanent conversion of wetlands, the loss of cultural resources, soils, wildlife, agricultural production, or socioeconomic conditions. Irreversible is a term that describes the loss of future options for a resource. Irretrievable is a term that applies to the loss of a resource that is not renewable and cannot be recovered for future use.

Please note that water is considered to be a renewable resource to a certain extent. As further discussed in Section 6.1 of the Draft EIS:

The use of surface/stream water for domestic and agricultural purposes could be viewed as an irretrievable use of the resources, to the extent that the water has been removed from its natural course. However, the use of this surface water is part of the cycle to return the water to the environment. For example, some of the water applied to land will return to the atmosphere through evaporation and transpiration through plants while water entering the ground will eventually discharge into the ocean. Water consumed by humans and animals, will evaporate through breathing and perspiration, and wastewater effluent from cesspools, septic systems and wastewater treatment plants that discharge into the ground will eventually reach the ocean. Water in the atmosphere, including water evaporating from the ocean and land, will fall as rain, including in East Maui, completing the cycle. This is an open cycle involving the movement of water through the atmosphere, land and oceans of the earth.

As part of a global hydrologic cycle, water is generally considered a renewable resource. In any particular location and time, however, there may only be a limited

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amount available, for example, to flow in streams or be diverted for other uses. To the extent that a commitment is made as to where that water goes or is used, the result is an irreversible use of that water for that period of time. The Proposed Action is a Water Lease with 30-year commitment to the proposed use of water. With careful management and responsible usage, water is a renewable resource and with that understanding the Water Lease would not involve an irretrievable commitment of the water resource.

Hence, the use of surface water is not irretrievable or irreversible.

Furthermore, to address your comments about water uses expanding, please note that should the Water Lease be issued it would be for the uses described in the EIS and for the term of the Water Lease issued. Should water uses be expanded it is assumed that subsequent environmental documentation may be warranted. Furthermore, the term of the Water Lease under the Proposed Action is for 30 years. After that term, the use of the water under the Water Lease would not be authorized (unless an extension or new lease is granted) and the water resources would presumably be available.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Jun Shin <junshinbusiness729@gmail.com>
Sent: Wednesday, November 6, 2019 1:13 PM
To: Ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Comments on DEIS for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas
Attachments: YPDA East Maui Water Lease Comments.docx

Aloha Mr. Earl Matsukawa & Mr. Ian Hirokawa,

My name is Jun Shin. I am the Environmental Justice Action Committee Chair for the Young Progressives Demanding Action (YPDA). Attached below is YPDA's comments on the subject DEIS.

Mahalo for your consideration,

Jun Shin

YPDA Environmental Justice Action Committee Chair
Phone: (808)-255-6663



Mr. Earl Matsukawa
1907 S. Beretania Street, Suite 400,
Honolulu, HI 96826

Mr. Ian Hirokawa
1151 Punchbowl St.
Honolulu, HI 96813

Thursday, November 7, 2019

Young Progressives Demanding Action Comments on the Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas

Aloha Mr. Earl Matsukawa & Mr. Ian Hirokawa,

My name is Jun Shin. I am the Environmental Justice Action Committee Chair for the Young Progressives Demanding Action (YPDA), an organization whose members work toward building a Hawai'i that is just, equitable, and sustainable through community organizing and issue advocacy.

YPDA offer these comments as one of the organizations who participated in the community effort to stop House Bill 1326 during the 2019 legislative session. YPDA is opposed to abuses taking place in stream diversions for private profit. At the same time, we also support the diversification of our agriculture, the local production of our food, and of our energy. These interests are not separate from one another as water is for the benefit of all people, affirmed by the Public Trust Doctrine and the Hawai'i State Constitution. Water remains a vital part of all these important policy making discussions, so while working on being both sustainable and self sufficient, we need to contend with generations of corporate greed and its effects on our native streams and the communities that need those streams.

The EIS should give an in-depth review of and discuss the benefits of shorter term lease options of less than 30 years, due to uncertainties of future rainfall and future water supplies. A 30 year

lease would be simply unaccountable to the communities that would be affected by the lease, this is not only an environmental issue, but an issue of good/accountable government. With the continual effects of climate change and the need for mitigation efforts, there needs to be a constant emphasis by our leaders and policymakers on the need for our natural resources to be protected for all people.

The EIS needs to discuss methods of restoring the 13 streams in the Honopou to Kailua area, where lots of people live and farm and gather. All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. The EIS needs to discuss the impacts of continuing those diversions, which will decimate 85% of native stream habitat and impact thousands of local residents. For generations now, farmers, cultural practitioners, and the larger community has fought long and hard for stream restoration. Many Kūpuna have passed away before seeing their streams restored. This historical injustice cannot be allowed to continue, traditional and customary rights are protected by the Public Trust Doctrine and by extension, the Hawai'i State Constitution. This is not only for current practitioners, but for the continued access of these practices for future generations.

Young Progressives Demanding Action is asking that the Draft Environmental Impact Statement includes this important information. We appreciate the opportunity to submit comments on this Draft EIS.

E Ola I Ka Wai, Water is Life!

Jun Shin,
Environmental Justice Action Committee Chair
Young Progressives Demanding Action (YPDA)
1561 Kanunu St.
Cell: 808-255-6663
Email: junshinbusiness729@gmail.com
CC: action@ypdahawaii.org



WILSON OKAMOTO
CORPORATION
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Jun Shin
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junshinbusiness729@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jun Shin:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *YPDA offer these comments as one of the organizations who participated in the community effort to stop House Bill 1326 during the 2019 legislative session. YPDA is opposed to abuses taking place in stream diversions for private profit. At the same time, we also support the diversification of our agriculture, the local production of our food, and of our energy. These interests are not separate from one another as water is for the benefit of all people, affirmed by the Public Trust Doctrine and the Hawai‘i State Constitution. Water remains a vital part of all these important policy making discussions, so while working on being both sustainable and self-sufficient, we need to contend with generations of corporate greed and its effects on our native streams and the communities that need those streams.*

Response 1: We acknowledge your comments. Your comment regarding the abuses taking place in stream diversions is unclear. However, please note that with respect to the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the Proposed Action relating to the East Maui

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License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai'i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

Regarding your comment that you support diversified agriculture and local food production, the crops in the Mahi Pono farm plan were chosen with the goal of increasing Hawai'i's food independence while also meeting criteria for commercial viability and potential. Many crops can be grown in Hawai'i, but relatively few can be grown at a scale and cost that compete with low-cost volume producers on the mainland, Mexico and elsewhere. For many crops, the Hawai'i market is too small for economies of scale, and shipping costs and delivery times are a disadvantage for exports. The Mahi Pono farm plan is a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community. With regards to the Mahi Pono farm plan, the EIS explains that at full operation (which is anticipated by 2030), the Mahi Pono farm plan will utilize approximately 30,000 acres in Central Maui. Section 2.1.4 of the Draft EIS state:

- *That total amount of water will be delivered to approximately 30,000 acres. Of those 30,000 acres:*

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- *Approximately 15,950 acres would be used for farming, including 12,850 acres for orchard crops and 3,100 acres for other crops.*
- *Approximately 13,800 acres would be used for pasture, of which about 4,700 acres would be irrigated.*
- *Approximately 250 acres would be used for green energy, such as a solar farm.*

Because there is insufficient surface water to support the entire farm plan, brackish groundwater will also be used. . .

This farm plan would consist of the following:

- *Approximately 20,650 acres of irrigated farm land, including 12,850 of orchard crops, 600 acres of tropical fruit, 1,200 acres of row and annual crops, in addition to a community garden and limited non-GMO energy crops.*
- *Approximately 13,800 acres of cattle pasture, comprised of 4,700 acres of irrigated pasture, and 9,100 acres of unirrigated pasture. This should fit the proposed model of grass-finishing on irrigated pasture. The unirrigated acreage is less than 10,000 acres, which helps ensure that that the entire area devoted to unirrigated pasture will remain productive.*

However, please note that Table 2-1 of the Draft EIS (Table 2-2 of the Final EIS) that was incorporated into Section 2.1.4 has been updated with more precise water usage numbers as shown on page 2-29.

With regards to the Public Trust Doctrine, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

Comment 2: *The EIS should give an in-depth review of and discuss the benefits of shorter term lease options of less than 30 years, due to uncertainties of future rainfall and future water supplies. A 30 year lease would be simply unaccountable to the communities that would be*

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affected by the lease, this is not only an environmental issue, but an issue of good/accountable government. With the continual effects of climate change and the need for mitigation efforts, there needs to be a constant emphasis by our leaders and policymakers on the need for our natural resources to be protected for all people.

Response 2: Please note that shorter Water Lease durations were considered within the EIS in Section 3.2.2.1 and throughout Section 3.4 of the EIS. Specifically, Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

Hence, a shorter lease term could limit the ability to successfully implement the Mahi Pono farm plan, which is inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui. However, the terms and conditions of the Water Lease are at the discretion of the BLNR.

With regards to your comment about the uncertainty of rainfall, in the scenarios presented in the a USGS report (2019) titled, "Estimated Groundwater Recharge from a Water-Budget Model Incorporating Selected Climate Projections, Island of Maui, Hawai'i" the aquifer systems in the Ko'olau Aquifer Sector are projected to see some of the largest increases in recharge, whereas aquifer systems in the Central Aquifer Sector are projected to see decreases in recharge due to changes in rainfall patterns from future climate change trends. However, please note that under the Proposed Action, surface water is diverted from the East Maui License Area (which lies largely over the Ke'anae, Waikamoi and Honopou aquifers in the Ko'olau Aquifer Sector (See EIS Figure 4-17), to the Central Maui agricultural fields, which largely lie over the Pā'ia Aquifer in the Central Aquifer Sector (See EIS Figure 4-18). As detailed in Section 4.2.2 of the EIS, the

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groundwater pumpage within the Ko‘olau Aquifer Sector is far below the Sustainable Yield (SY). This section of the EIS also addresses the anticipated impacts to the Central Aquifer Sector from the conveyance of East Maui surface water to Central Maui for irrigation purposes. Section 4.2.2 of the EIS has been updated to reflect the USGS report, as shown on pages 4-69 to 4-71.

With regards to climate change in general, please note that climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai‘i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Hence, climate change was used to assess the various alternatives presented in Chapter 3. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on the pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Comment 3: *The EIS needs to discuss methods of restoring the 13 streams in the Honopou to Kailua area, where lots of people live and farm and gather. All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. The EIS needs to discuss the impacts of continuing those diversions, which will decimate 85% of native stream habitat and impact thousands of local residents. For generations now, farmers, cultural practitioners, and the larger community has fought long and hard for stream restoration.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action.

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These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of

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those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *Many Kūpuna have passed away before seeing their streams restored. This historical injustice cannot be allowed to continue, traditional and customary rights are protected by the Public Trust Doctrine and by extension, the Hawai‘i State Constitution. This is not only for current practitioners, but for the continued access of these practices for future generations.*

Response 4: We acknowledge your comments. As discussed in Response #1 above, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B’s 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

With regards to cultural practices and practitioners, the CIA (Appendix F) acknowledges that the Proposed Action may impact Native Hawaiian cultural resources and practices and provides for several recommendations to mitigate those impacts. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to ‘ōpae, ‘o‘opu, pūpūlo‘i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Honopou (Puniawa Tributary), Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili‘ula, Pa‘akea, Kapā‘ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Kualani (or Hāmau),

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East Wailuāiki, West Wailuāiki, Pua‘aka‘a Tributary, and Waia‘aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo‘i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili‘ula, Pua‘aka‘a, Pa‘akea, Waia‘aka, Kapā‘ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, on pages 4-158 to 4-159. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action as shown on page 4-239 to 4-252 of the Final EIS.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training,

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inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Kula Community Association

P.O. Box 417
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October 17, 2019

Mr. Shan Tsutsui
Mahi Pono
2200 Main Street, Ste 450
Wailuku, Hawaii 96793



Mr. Christopher Benjamin
Alexander & Baldwin
822 Bishop Street
Honolulu, Hawaii 96813

Ms. Suzanne Case
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Mr. Ian Hirokawa
Board of Land and Natural Resource
1151 Punchbowl Street
Honolulu, Hawaii 96813

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 S. Beretania Street, Ste 400
Honolulu, Hawaii 96826

RE: Request for additional time to submit comments for the Draft EIS for East Maui Water Leases

Dear Mr. Tsutsui, Mr. Benjamin, Mr. Hirokawa, Mr. Matsukawa, and Ms. Case;

The Kula Community Association Board of Directors requests that our upcountry Maui community receive a 60-day extension to review the very large 2,700 page Draft EIS for the proposed East Maui water system lease. Our region has a strong interest in knowing what is in the Draft-EIS document and in understanding all of its many ramifications. Our community uses water from the East Maui system. We have two large Department of Hawaiian Homelands residential and farming communities which receive priority under state water policies, a large

farming community, the Kula Agricultural Park and its soon-to-be opened 262-acre addition, approximately 10,000 Kula residents, and about 35,000 Upcountry residents. The waters that will be coming from the lease area are of considerable importance to all of the above. Therefore, we ask that you please give us an additional 60 days to review the huge document and to make useful comments.

The Board of Land and Natural Resources required A&B and EMI to proceed with the EIS preparation in 2016. The applicant has been working on the document for about three years since they issued their EIS Prep Notice. The result of their three years of effort is a 2,700 page document that deserves to be read and analyzed by those affected. The purpose of the draft EIS review process is to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives. Please give us the courtesy of an extension and we will provide useful feedback that should make the final EIS a better document.

Mahalo,
Gina Flammer, President
Kula Community Association
flammerfamily@aol.com

Dick Mayer, Vice-President
Kula Community Association
dickmayer@earthlink.net

CC Director Scott Glenn, OEQC
Kelly King, Chair, Maui County Council
Doreen Napua Canto, KCA



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Ms. Gina Flammer
Kula Community Association
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Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Gina Flammer:

Thank you for comments dated October 17, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The Kula Community Association Board of directors Requests that our upcountry Maui community receive a 60-day extension to review the very large 2,700 page Draft EIS for the proposed East Maui water system lease. Our region has a strong interest in knowing what is in the Draft-EIS document and in understanding all of its many ramification.*

Response 1: Please note that we provided an initial response letter to your public comment period extension on November 1, 2019 enclosed as Attachment #1. As you were apprised by email dated October 28, 2019, from Mr. Tom Eisen of the Office of Environmental Quality Control, there is no statutory mechanism that provides for time extensions of the comment period. Please note that we received over 400 comments during the statutory public comment period.

Comment 2: *Our community uses water from the East Maui system. We have two large Department of Hawaiian Homelands residential and farming communities which receive priority*

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under state water policies, a large farming community, the Kula Agricultural Park and its soon-to-be opened 262-acre addition, approximately 10,000 Kula residents, and about 35,000 Upcountry residents. The waters that will be coming from the lease area are of considerable importance to all of the above. Therefore, we ask that you please give us additional 60 days to review the huge document and to make useful comments.

Response 2: We acknowledge your comments. Please note that Section 2.1.3.1 of the Draft EIS explains how the Upcountry Maui region receives water under the Proposed Action. Specific information regarding the Department of Hawaiian Home Lands' (DHHL) future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown on pages 2-4 to 2-7 of Final EIS. As explained on shown on pages 2-4 to 2-7 of Final EIS, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water, CWRM could act on a reservation request related to a proposed lease.

As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the

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Department of Land and Natural Resources' (DLNR) Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

While Mahi Pono's current farm plan assumes the full use of the water that can be diverted from East Maui streams after compliance with the CWRM D&O, Mahi Pono will be obligated to reduce elements of its farm plan, and thus the availability of crop, to accommodate the permanent reduction in available water resulting from DHHL's allocation. The Reduced Water Volume alternative described in Chapter 3 of the EIS provides an assessment of the impacts of less water being made available for the Proposed Action, including Maui Pono farm plan in the Central Maui agricultural fields. Specifically, consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

You are correct that Section 2.1.1 of the Draft EIS stated, with respect to the DHHL reservation, that "*Until that reservation is physically claimed, however, it will be available for use by the lessee.*" That statement has been clarified in the Final EIS as shown on pages 2-4 to 2-7, as it is uncertain whether the DHHL reservation amount would be available to the lessee until such time as it is needed by DHHL. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

Please note that as discussed in Section 2.1.2 of the Draft EIS, under the Proposed Action, at full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd will be

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diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Regarding Kula Agricultural Park and the 262-acre expansion, please note that the Draft EIS provided information about the amount of water used at KAP and the source of water for the KAP expansion area in a number of sections. Section 2.1.3.2 of the Draft EIS states:

Presently, water demands at KAP are served by the County, which, by contractual agreement, is able to draw up to 1.5 mgd from the end of the Hāmākua Ditch and to utilize a former plantation reservoir to serve KAP. As noted previously, the Ditch is fed directly by the EMI Aqueduct System through the Wailoa Ditch. As of late 2015, the Maui County Office of Economic Development calculated that the current use for the KAP is approximately 548,191 gpd of which 80-90 percent of delivered water is from surface water sources with the remaining portion from basal aquifer wells. Due to the current design of the County's KAP distribution system (pump system in the reservoir), 1.5 mgd must be delivered to the County in order for it to provide the needed 548,191 gpd to the KAP users.

Section 4.7.4 of the EIS notes that in 2017, of the water delivered to MDWS through the EMI Aqueduct System, "About 0.46 mgd were for crops at the KAP, however, 1.5 mgd had to be supplied by the EMI Aqueduct System to produce the 0.46 mgd used by the farmers."

Moreover, the Draft EIS explains that the water delivery agreements in place with MDWS are contingent upon issuance of the Water Lease, which include water delivery for the KAP and the KAP expansion. Section 3.3 of the Draft EIS states:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS. At this point in time, it is unknown whether sufficient groundwater resources exist in Upcountry Maui to meet these water demands. It is anticipated that the development of alternative water-source infrastructure would be prohibitively expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment.

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Appendix H (Economic and Fiscal Impact Study) and Appendix I (Agricultural and Related Economic Impacts) further provide:

Under the Proposed Action, EMI will continue to supply water to the MDWS for Upcountry Maui, including for agricultural water use. It is also noted that as part of the County's purchase of the 262-acre expansion of the KAP, EMI has agreed to supply the water for the expansion. The additional water will come from water savings due to infrastructure improvements to the reservoir and pumps that serve the KAP that will reduce system losses (Plasch Econ Pacific, LLC, 2019). The actual amount of water delivered from the EMI Aqueduct System is not anticipated to increase in order to serve the 262-acre expansion.

Appendix H, Section B-2a Appendix I, Section 6b of the Draft EIS provides:

In 2018, A&B sold 262 acres to the County for the expansion of the Kula Ag Park, and agreed to supply the MDWS with 1 mgd of surface water from the EMI System to meet the needs of the expansion area, subject to the continuation of State permits or issuance of the Water Lease. The needed water allocation will result from infrastructure improvements to the reservoir and pumps that serve the Ag Park, and use existing deliveries from the EMI System more efficiently. Thus, the current level of water deliveries to the Kula Ag Park will suffice for both the existing and expanded Kula Ag Park areas.

Please note that the above information has been added to Section 2.1.3.2 of the Final EIS as shown on pages 2-20 to 2-21.

Comment 3: *The Board of Land and Natural Resources required A&B and EMI to proceed with the EIS preparation in 2016. The applicant has been working on the document for about three years since they issued their EIS Prep Notice. The result of their three years of effort is a 2,700 page document that deserves to be read and analyzed by those affected. The purpose of the draft EIS review process is to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives. Please give us the courtesy of an extension and we will provide useful feedback that should make the final EIS a better document.*

Response 3: We acknowledge your comments. As noted in Response #1 above, we provided an initial response letter to your public comment period extension on November 1, 2019 enclosed as Attachment #1. As you were apprised by email dated October 28, 2019, from Mr. Tom Eisen of the Office of Environmental Quality Control, there is no statutory mechanism that provides for

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time extensions of the comment period. Please note that we received over 400 comments during the statutory public comment period.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Attachment #1

From: HI Office of Environmental Quality Control
<HIOfficeofEnvironmentalQ@doh.hawaii.gov>
Sent: Monday, October 28, 2019 10:34 AM
To: flammerfamily@aol.com; dickmayer@earthlink.net
Cc: Hirokawa, Ian C; Earl Matsukawa; Case, Suzanne D; Public Comment
Subject: October 17 letter requesting an extension to review DEIS for East Maui Water Lease

Aloha,

In response to your October 17, 2019 letter requesting additional time to submit comments for the subject EIS, OEQC offers the following comments:

Pursuant to HRS Chapter 343, which establishes the environmental review process in Hawai'i, there is no authority to extend the statutory 45-day public comment period on Draft EISs.

While in the past, there have been "extra-legal" decisions to extend the comment period, this has resulted in a legal cloud over both the requirement to respond to any comments submitted after the statutory 45-day deadline, as well as the legal ability for a "late-commenter" to challenge the agency's potential Acceptance determination on the Final EIS.

Accordingly, to facilitate the occasional situation where the action's proponent deems a longer comment period is appropriate, we promote the concept that the Draft EIS can be "republished" (or if the DEIS is changed in any way, then a "2nd DEIS" can be published) in *The Environmental Notice*. Such an additional publication would trigger another "legal" 45-day public comment period; any comments submitted during any of the comment periods would be considered as "timely submitted," and thus would need to be included (with a response) in the action's Final EIS. Challenge rights would be preserved.

Since OEQC publishes EISs at the behest of proponents of the action (i.e., the applicant in this case), we defer to the applicant's decision on whether to re-publish any particular EIS. Accordingly, we would suggest you take up this matter with the applicant's contact for this action.

Please feel free to contact me should you desire additional information on the environmental review process.

Sincerely,

Tom Eisen, Planner
Office of Environmental Quality Control
State of Hawai'i
(808) 586-4185



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10238-04
November 1, 2019

Ms. Gina Flammer, President
Kula Community Association
(flammerfamily@aol.com)

Mr. Dick Mayer, Vice-President
(dickmayer@earthlink.net)
Kula Community Association

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū and
Huelo License Areas

Dear Ms. Flammer and Mr. Mayer:

This is in response to your October 17, 2019 letter requesting a 60-day time extension of the 45-day comment period for the subject Draft Environmental Impact Statement (EIS). The comment period for the Draft EIS will end on November 7, 2019.

As you were apprised by email dated October 28, 2019 from Mr. Tom Eisen of the Office of Environmental Quality Control, there is no statutory mechanism that provides for time extensions of the comment period. Therefore, we urge you to submit whatever comments you have within the 45-day comment period. We will, however, address and respond to comments submitted by you within a reasonable time after the end of the 45-day comment period.

Sincerely,

Earl Matsukawa, AICP
Vice President & Director of Planning

AA/em

cc: Suzanne Case, Department of Land and Natural Resources
Ian C. Hirokawa, Department of Land and Natural Resources
Shan Tsutsui, Mahi Pono
Chris Benjamin, Alexander & Baldwin
Office of Environmental Quality Control
Kelly King, Maui County Council Chair
Doreen Napua Canto, Kula Community Association

From: Arts of Hawaii <leojosephjohn@gmail.com>
Sent: Wednesday, November 6, 2019 11:15 AM
To: jan.c.hirokawa@hawaii.gov; Public Comment
Cc: governor@iq.hawaii.gov; Tulsioffice@mail.house.gov; Office of U.S. Senator Brian Schatz(imailagent); Office, Hawaii (Hirono); tamara.paltin@mauicounty.us; info@oha.org; Sen. Mike Gabbard; Sen. Russell Ruderman; senchang@capitol.hawaii.gov; senkkahele@capitol.hawaii.gov; senkeithagaran@capitol.hawaii.gov; Hui Info; editor@mauitime.com; deborah@mauitime.com; Mark@marksheehan.com; headquarters@earthjustice.org; Tiare Lawrence; harrykim@hawaiiicounty.gov; mayor@kauai.gov; mayor@honolulu.gov; mayors.office@mauicounty.gov
Subject: MAUI TIME MAGAZINE 10.31.2019 - Mahi Pono Is Coming For Our Water

Aloha, Everyone -

In regards to the above subject line it has taken sometime for myself to sift threw this article; due to it length. As well as, waiting for a responses from the Clinton Foundation in - NYC. However, in-part their explanation was @ one time when Hillary Clinton went into court she first visited the copy room @ her office. Then taking two boxes of copy machine paper. Placing them on a two wheel cart, and then rolling them into a Federal Court Room - But, after yesterday's round on Tammy Baldwins's Facebook page D-WI, w/ Hillary Clinton, and Tulsi Gabbard - Seems the Clinton's have slipped away to the Dominican Republic. - Sosua....

Our thought is; the general population of the Hawaiian Islands County government should put in place a permit program in place for private land holders to (commercial, and residential) for private cistern systems.

LEO THINER - BRICKEY

CEO

Arts of Hawaii

Honokowai - Maui - Hawaii

From: Arts of Hawaii <leojosephjohn@gmail.com>
Sent: Thursday, November 7, 2019 4:14 PM
To: Public Comment
Subject: MUSSEL GUY - SIXTEEN PEOPLE HAWAII

ABOVE THE FOLD



"MUSSEL GUY"
SIXTEEN PEOPLE - HAWAII
Photographed, and copyright 2019
Leo Thiner

TULSI 2020

Arts of Hawaii
Honokowai - Maui - Hawaii



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September 3, 2021

Mr. Leo Thiner-Brickey
Arts of Hawaii
leojosephjohn@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Leo Thiner-Brickey:

Thank you for comments dated November 6, 2019, and November 8, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *In regards to the above subject line it has taken sometime for myself to sift through this article; due to its length. As well as, waiting for a responses from the Clinton Foundation in - NYC. However, in-part their explanation was @ one time when Hillary Clinton went into court she first visited the copy room @ her office. Then taking two boxes of copy machine paper. Placing them on a two wheel cart, and then rolling them into a Federal Court Room - But, after yesterday's round on Tammy Baldwins's Facebook page D-WI, w/ Hillary Clinton, and Tulsi Gabbard - Seems the Clinton's have slipped away to the Dominican Republic. - Sosua... Our thought is; the general population of the Hawaiian Islands County government should put in place a permit program in place for private land holders to (commercial, and residential) for private cistern systems.*

Response 1: We acknowledge your comments. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System

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Letter to Mr. Leo Thiner-Brickey
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for the uses described in the EIS. The environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Mark Sheehan <mark@marksheehan.com>
Sent: Tuesday, November 5, 2019 2:52 PM
To: Ian.C.Hiokawa@hawaii.gov; Public Comment
Cc: Jeffreyudv
Subject: DEIS for Lease of East Maui Streams

Dear Mr. Earl Matsukawa,

I care very deeply about the proposed lease of public trust water because I am a partner in 10.5 acres of agricultural land in Haiku. My partner and I have farmed this land for decades use the water from Kuiaha stream to raise fish on our farm. Diversion of these waters, not included in the DEIS as far as I can see, will severely impact our farm operations.

Further, my partner and i are concerned that no one is taking care of the watershed which we know has been in decline from decades of neglect.

* The EIS need to needs to discuss the option of not diverting any streams and discuss how that would benefit East Maui ecosystems and East Maui Communities.

furthermore, The EIS should included discussion of a plan and funding for a plan to manage the invasive species in the license area. These invasive species and animals are harming the health and the function of the watershed lands.

* There is not discussion of shorter term leases. As longtime residents of Haiku, we see that weather patterns are changing, there is less rainfall, longer drought periods. Future rainfall and water supply are unknown. There should be discussion of a five-year lease with renewal subject to climate change impacts and farm successes.

* The EIS needs to discuss restoring the 13 streams in the Honopou to Kailua area where many people farm and gather. The EIS only says that all of the water will be diverted 60% of the time. The EIS needs to discuss the impacts of continuing those diversions.

* The EIS should include a full archeological inventory survey since there are unrecorded archeological sites in the lease area that could be affected by resumed diversions.

* The EIS needs to include information on the true potential of farming in the East Maui and Upcountry areas. The diversion of Kuiaha stream, for example, will severely impact our Haiku Aina Permaculture Initiative. We personally know of dozens of small farm that are cultivating hundreds of acres in the Haiku and Upcountry areas. These areas benefit from a five streams while EMI system diverts over 50 streams between Nahiku and Maliko Gulch.

We are asking that the DEIS included this important information.

Thank you for this opportunity to submit comments on the Draft EIS.

Mark Sheehan

President, HAPI

Jeffrey Bronfman,

VP, HAPI

*



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September 3, 2021

Mr. Mark Sheehan & Mr. Jeffrey Bronfman
mark@marksheehan.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Mark Sheehan:

Thank you for comments dated November 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I care very deeply about the proposed lease of public trust water because I am a partner in 10.5 acres of agricultural land in Haiku. My partner and I have farmed this land for decades use the water from Kuiaha stream to raise fish on our farm. Diversion of these waters, not included in the DEIS as far as I can see, will severely impact our farm operations.*

Response 1: We acknowledge your comments that you care deeply about the Proposed Action and that you are a partner in 10.5 acres of agricultural land in Ha‘ikū. We understand that you and your partner have farmed this 10.5 acres for decades from the water of Kuiaha Stream to raise fish on your farm. Please note that Kuiaha Stream is outside of the License Area and is not subject to the Water Lease application and is beyond the scope of the EIS.

Comment 2: *Further, my partner and i are concerned that no one is taking care of the watershed which we know has been in decline from decades of neglect.*

Response 2: As discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed

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management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Comment 3: *The EIS needs to discuss the option of not diverting any streams and discuss how that would benefit East Maui ecosystems and East Maui Communities.*

Response 3: Please note that the EIS does present a No Action alternative however, under this alternative 30% of water could be diverted from the License Area. For purposes of the No Action (i.e., no Water Lease) alternative, it is reasonable to assume that, in the absence of a Water Lease, EMI will, *at best*, be able to continue to divert the approximately 30% of water that is estimated to represent the average annual amount that originates on private lands within the 50,000-acre Collection Area by way of the 1938 Agreement. A copy of the 1938 Agreement has been provided within the Final EIS as Appendix R. The 30% figure was agreed to between the BLNR and EMI at the end of 1987, to represent the amount of water originating from private (vs. State) lands in the 50,000-acre Collection Area, and was based on estimates of the average annual total yields from the streams in License Area. Prior to that time, the USGS provided a table in which USGS estimated, for each of the four license areas, the percentages of water estimated to have arisen on State land versus private land. This was explained in the testimony and exhibits submitted to CWRM throughout the contested case hearing on the IIFS petitions. Copies of relevant documents on this subject have been appended to the Final EIS as Appendices R-1, R-2, R-3, R-4, and R-5, and are further described in Section 3.3 of the Final EIS as shown on pages 3-24 to 3-25.

The No Action alternative assessed in Section 3.3 EIS assumes that if no Water Lease were issued, the EMI Aqueduct System could continue to divert approximately 30% of the water available from the Collection Area, plus approximately 4.37 mgd from the privately owned lands between Honopou Stream and Māliko Gulch. That is because the rights under the 1938 Agreement are independent of the Proposed Action under consideration in this EIS.

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Letter to Mr. Mark Sheehan & Mr. Jeffrey Bronfman

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Regarding your comment that the EIS needs to further explore the beneficial impacts of the No Action alternative on the ecosystem and community of East Maui, please note that this is discussed in Section 3.4 of the EIS. Moreover, a table of the comparative benefits and impacts has been added to summarize all the benefits and impacts from the Proposed Action and reasonable alternatives as shown on pages 3-49 to 3-80.

Comment 4: *Furthermore, The EIS should include discussion of a plan and funding for a plan to manage the invasive species in the license area. These invasive species and animals are harming the health and the function of the watershed lands.*

Response 4: As discussed in Response #2 above, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Comment 5: *There is not discussion of shorter term leases. As longtime residents of Haiku, we see that weather patterns are changing, there is less rainfall, longer drought periods. Future rainfall and water supply are unknown. There should be discussion of a five-year lease with renewal subject to climate change impacts and farm successes.*

Response 5: We disagree with your comment. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as

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Letter to Mr. Mark Sheehan & Mr. Jeffrey Bronfman

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Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Regarding your comment that climate change has changed the situation for instream users and uses, please note that climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will

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bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Hence, climate change was used to assess the various alternatives presented in Chapter 3. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on the pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Comment 6: *The EIS needs to discuss restoring the 13 streams in the Honopou to Kailua area where many people farm and gather. The EIS only says that all of the water will be diverted 60% of the time. The EIS needs to discuss the impacts of continuing those diversions.*

Response 6: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

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Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 7: *The EIS should include a full archeological inventory survey since there are unrecorded archeological sites in the lease area that could be affected by resumed diversions.*

Response 7: Please note that an Archeological Inventory is not required for the Proposed Action. Correspondence from SHPD dated January 27, 2017 and October 6, 2017 are appended to Draft EIS Appendix E (Archaeological Literature Review and Field Inspection), confirming SHPD's position regarding an Archeological Inventory Survey. Issuance of the Water Lease is not anticipated to affect any historic property, aviation artifacts, or burial site.

As discussed in Draft EIS Section 4.5 (Historic and Archaeological Resources) the Proposed Action does not involve any new construction or significant ground disturbance within undisturbed areas within the License Area. The Proposed Action continues the use of the EMI Aqueduct System for the transport of surface water, and allows the lessee or its permittees, to

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Letter to Mr. Mark Sheehan & Mr. Jeffrey Bronfman

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maintain and repair existing access roads and trails long-used as part of the EMI Aqueduct System. As discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7 enclosed, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System. Moreover, this was explained to SHPD as discussed in the Archaeological Literature Review and Field Inspection provided as Appendix E of the EIS (“Additional information regarding the proposed Water Lease was provided to the SHPD including the understanding that the proposed Water Lease will not involve any significant ground disturbance within undisturbed areas.”)

Comment 8: *The EIS needs to include information on the true potential of farming in the East Maui and Upcountry areas. The diversion of Kuiaha stream, for example, will severely impact our Haiku Aina Permaculture Initiative. We personally know of dozens of small farm that are cultivating hundreds of acres in the Haiku and Upcountry areas. These areas benefit from a five streams while EMI system diverts over 50 streams between Nahiku and Maliko Gulch.*

Response 8: Please note that the Draft EIS did include information about the potential of farming in East Maui. Specifically, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed

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some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Regarding farming in Upcountry Maui, the EMI Aqueduct System supplies water to the MDWS which then delivers a portion of it to Upcountry Maui farmers. The agricultural impacts of possible changes in this supply are addressed in Section 4.7.4 of the EIS and Appendix I, “East Maui Water Lease: Agricultural and Related Economic Impacts”.

For Upcountry Maui farms that are irrigated with water diverted from nearby streams (including Kuiaha Stream), the proposed State Water Lease will not affect (1) water flow of these streams, (2) existing or future water diversions of these streams, or (3) existing or potential farming operations that use diverted water from these streams. The reason for the lack of impacts is that the License Area does not include any Upcountry Maui streams; the License Area is east of Honopou Stream, while Upcountry Maui is west of this stream.

Note, however, that EMI/Mahi Pono have rights to divert water from streams located between Honopou Stream and Maliko Gulch. For all alternatives, an average of about 4.37 mgd will be diverted from these streams to irrigate Central Maui crops.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC’s website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Mary McClung Law <observingmaui@gmail.com>
Sent: Thursday, November 7, 2019 3:30 PM
To: Public Comment
Subject: Comments on Alexander and Baldwin Draft EIS

From the desk of Mary McClung Law
November 6, 2019
Comments on Alexander and Baldwin's Draft Environmental Impact Statement

Earl Matsukawa
Waterleaseeis@wilsonokamoto.com

Attn: Mr. Matsukawa et al,

Please accept my comments and concerns in opposition to Alexander and Baldwin's proposal to further divert stream water from East and West Maui streams. I have been a resident and concerned citizen practicing natural farming in Kipahulu since 1999, including successfully dryland farming (non irrigated crops, based on rainfall) bananas with my husband Corey Law (who grew up flood irrigation farming in Central Valley Calif). Protecting the integrity of Maui's aquifer and restoration of Maui ecosystems should be top priorities to local and state government officials, businesses, agriculture enterprises, residents and visitors alike, because without it, we all will suffer greatly.

According to the USGS publication on estimating groundwater of Maui as of August 16, 2019, "Demand for freshwater on the island of Maui is expected to increase by 45% between 2015 and 2035. Wetter and drier climate scenarios impact the availability of the groundwater to meet this demand...estimates of groundwater recharge are needed." <https://pubs.er.usgs.gov/publication/sir20195064>

This publication was written in partnership with the County of Maui Water Supply and others. This points out inadequate information available to even consider a 30 year lease. Any lease must be for less water than has been taken in the past, and on a year to year basis. This option has to be seriously included in your draft EIS.

Restoring ecosystems can play a part in replenishing the aquifer. And the aquifer is an invisible and somewhat mysterious force that all residents and visitors, present and future depend on. We cannot afford to make mistakes going forward that put our freshwater lens at risk. We already know that the water tables have been dropping to below half of what it was since it was first being measured.

I have several relevant points I am petitioning to be included in your analysis which are either missing or lacking in discussion, consideration and data in the Draft EIS.

~ UH scientists have concluded that Hawaiian islands will continue to experience less and less tradewinds and rainfall due to climate change. We are already noticing a drop in rainfall and less tradewinds. The draft EIS needs to use the most up to date predictive climate science when considering future rainfall. <https://www.hpr2.org/post/planet808-examining-climate-change-islands#stream/0>

~ Due to this uncertain future of rainfall, we would be prudent to mitigate the great risk of compromising our freshwater lens by safeguarding Maui's future water supply and aquifer as much as possible. Any lease should be for a short period of time, smaller amount of water, and have requirements of proof of good management practices in good in order to be considered for renewal. The Draft EIS should include these public good options.

~ Streambeds are the most effective place for water to filter down into the Earth, replenishing the aquifer as they have for millennium. When a stream is dry, no water is filtering down in this way. The draft EIS needs to address this impact on our precious island aquifer.

~ As freshwater streams flow into the ocean, there is an increase of fish and diversity at the stream mouth. This benefits fishermen as well as serving the greater pelagic fish populations with ample nutrition. This impact needs to be taken into account. No water should be taken from East or West Maui streams until Mauna to Makai flow is reestablished. This is becoming general knowledge.

~ The original lease agreement was written as allowing diversion only AFTER the land and the people have their share. Yet A & B continued to increase the size, substantiality, and number of the flumes to the point of running several streams completely

dry for numerous decades, and in the Draft EIS, it is stated that their damaged streams should be a new baseline for any future agreement. This shows a lack of regard on the part of A and B for following any restrictions the state might place on a future water lease. How will records be made available to the public to prove responsible management of the EMI and stream systems.

~ Corporations have as their top legal priority to make the shareholders as much money as they can. Legally they cannot have a different top priority, such as the public good, even when managing a commons. This alone should make it clear that any water flowing out of Maui streams needs to be managed by the state, not a private interest business. The draft EIS needs to include a serious option for state management.

~ As we saw when the streams were not flowing, they get hugely overgrown with thick brush, invasive species and bramble. That makes it impossible for people including cultural practitioners to travel via the waterways, which is supposed to be a right protected by state law. This impact was not and needs to be addressed in the Draft EIS, and is part of why the streams need to continue to flow 24/7.

~ There is a local freshwater fish which actually climbs waterfalls several hundred feet high in order to return home and breed. The Hawaiian Goby fish have suction cup feet and are considered of special importance to the scientific as well as the Hawaiian communities. They are present in several East Maui streams, and could be reestablished wherever they have died out due to A and B draining the streams over the last 130 years. These need to be included in the Draft EIS.

~ There are native birds that likely have been impacted also. Not only the forest birds who would not have year round access to freshwater when the streams are dried up, but also coastal birds that evolved to depend on the ecosystem being in tact. Birds and other fauna, esp native Hawaiian ones need to be seriously surveyed comparing in tact streams vs the EMI damaged ones. Restoration of the mountain to ocean flow would clearly help restore damaged ecosystems due to the last 130 years of taking more than was originally intended by the agreement. This sustained flow to the ocean needs to be part of the Draft EIS.

~ Modern soil science is realizing how the microbiology in the soil affects the robustness of the surrounding forest tree and plant communities. The microbiology cannot live where the soil is dried out. This issue is also not addressed, but needs to be.

~ Diagrams showing specifically where Nahiku water comes from and how much need to be included in the Draft EIS. Records show that underground tunnels naturally feed the Nahiku intake pipe and there is no shutoff. So the claim that Nahiku would be at risk of losing their water if the proposal from A and B stream flow is not accepted seems to be a scare tactic, and if so, another strike against them for irresponsibly “yelling fire in a crowded theater” only for their gain.

~ Upcountry water also needs specific details. Again, contrary to statements made in the Draft EIS, records show that Upcountry is served water via the County pipes. Only in times of drought have they gotten some water via EMI. These records and numbers need to be included for consideration of alternatives to EMI water for Upcountry.

~ Also regarding Upcountry water, several well projects have already been taken on, and oughtn't be so readily dismissed as an option. Upcountry wells and other options need to be included in the Draft EIS.

~ Kula Ag Park was promised to become 300 acres, yet the Draft only mentions 80. Why the discrepancy? Please include information about this in the draft EIS and include 300 acres in an alternative proposal. We have youth on Maui learning to farm who cannot afford land. The Ag Park would provide an affordable option for them as well as more seasoned farmers who just need access to more land because they are so successful.

~ Acreage in East Maui suitable for growing taro or truck crops is grossly underestimated in potential productivity and number of acres. There are many hidden loi in the forests alongside streams which can be restored to growing taro and other indigenous crops. The local model for this is the Kipahulu Ohana who has been partnering with the National Park and restored many stream fed indigenous loi and crops in previously overgrown loi alongside Oheo Gulch. According to a UH Manoa report released 2-26-2019, titled “Indigenous Agriculture has the Potential to Contribute to Food Needs Under Climate Change”, there is the potential for restoring 250,000 acres of traditional agroecosystems, producing more than 1 million metric tons annually. They advise, “plans to meet food self sufficiency goals must consider how climate change will affect agricultural viability”. See AAAS and Eureka Alert

~ There is not adequate explanation of why the same amount of water to “responsibly” farm the proposed 15,000 acres is exactly the same as A&B took to farm 30,000. It should be less than half, based on a responsible choice to conserve water, and choose less thirsty crops. Detailed explanation rather than broad sweeping statements about quantities needed should be included as well as earnest actions in dryland farming crop choices.

~ Trails should be included, whether for the public or for responsible educational and conservation groups to manage. These are not private lands, these are huge swaths of public land and the public should have reasonable access. Several groups such as Na Hele On Trails, Sierra Club, and more would be good at providing oversight as well as potential service trips. This option needs to be included in the Draft EIS.

~ Every Maui tour brochure for the Hana Hwy shows picturesque taro loi in Keanae and waterfalls galore. Yet the taro is a fraction of what it could be because so many people have had to move away after the water was no longer flowing well. And same goes for the awesomeness of the waterfalls. Impacts on tourism of running streams dry do not seem to be explored substantially.

~ Crop choices are a concern. Responsible sustainable farming that you claim to be supportive of is farming based on rainfall and soil types. Your choices of citrus, cattle are not low water use. Whereas growing market demand would point to planting such crops as coconuts, dates and others. Getting creative, surely with your sales resources, you could create a brand for Maui Plumeria, Best lei in the Islands, perfumes etc for instance. And other drought tolerant crops. Think how your boulevards could be lined with fragrant varietal and historic plumeria, everyone driving by would have to have one! Your plumeria tours would pay more than the farming. Neem trees could be grown for their fertilizer potential and double benefit the surrounding area by increasing permeability and it is cooler in the shade. It is also a medicinal plant, known in Kenya as marobaini meaning forty, because it has 40 different medicinal uses. It is also well recognized in India and beginning to be researched in the West. Draft EIS needs to include responsible and innovative crop choices such as these.

~ There is a gaping hole when it comes to identifying soil types and arable quality across the land in question. The Draft EIS needs to spell out via maps and charts which and how many acres of land are poor arable lands, etc. This information should be available to you because soil types on Maui were well studied and documented, and would be a first step in any good farm plan.

~ County Plan guidelines state a goal of 5 mgd of reclaimed water to be used. No mention is found, it is currently missing from your review and needs to be addressed.

~ Management part of the plan should have some details in the Draft EIS. Any other person applying for a state lease has to show in detail how they plan to manage it and improve the land. Usually includes restoring native species.

~ Consider taking a page from Ulupalakua Ranch and work with Art Medieros and Auwahi to not only restore native forests, but increase soil permeability, and perhaps even rainfall in these areas. Their work has been scientifically studied and documented to prove increase in soil permeability in adjacent land due to dryland forest restoration. See these two important documents:

<https://static1.squarespace.com/static/573a2a872fe131b2351c0330/t/575a2ea927d4bd5d73013749/1465527980840/Perkins+et+al.-2012+Geophysical+Research+Letters.pdf>

<https://static1.squarespace.com/static/573a2a872fe131b2351c0330/t/575a2a6f27d4bd5d73012392/1465526976183/Perkins+et+al+2014+EcoHydro.pdf>

Restoring of native habitats and forest should definitely be part of the Draft EIS. Art Medieros is the most knowledgeable one to advise where and how much land should be allocated.

~ You say the water table has gotten saline, some of your wells have been compromised and gotten saline. This is a definite concern for everyone on Maui. How much could this be due to commercial fertilizer salt that has gone down into the aquifer in this area, or overuse of groundwater? Artesian springs in Wailuku have dried up. This just points to how critical it is for Maui to focus on replenishing our aquifer. We cannot afford to abandon land or wells due to irreversible damage of any more rise in salinity and compromise of the irreplaceable freshwater lens. In India, whole villages have been abandoned because of that. In California's Central Valley, the wells are all going dry, so there is a race to drill deeper and deeper wells. Then those wells go dry, and they don't stop drilling, they just dig in and drill more furiously than before. The large corporate agribusiness that moved into the area recently has kept all the well drilling rigs busy at their place while neighbors fruit trees have had to be cut down due to death by non irrigation. At this point the land is actually sinking because the aquifer has shrunk so intensely. There are innovative ways to respond. <https://www.sacbee.com/news/california/big-valley/article229148999.html>

~ There are crops that tolerate salt. Coconuts are one. An exploration of potentials for these plants should be explored. http://www.biosalinity.org/salt-tolerant_plants.htm

~ Details of well water tests should be presented in the Draft EIS and considered including dates and any specifics about presence of salts and chemicals such as 24D etc which were used by A and B.

Thank you for this opportunity to submit my comments on, observations of and concerns about this draft EIS. I would like to hear your responses, ideas and changes to the Draft EIS which include these valid and important concerns.

Sincerely yours,

Mary McClung Law

148C HC1

Hana, Hawaii

96713

Observingmaui@gmail.com

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<https://www.redbubble.com/people/Bee2deva/portfolio?asc=u>



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September 3, 2021

Ms. Mary McClung
Mary McClung Law
148C HC1
Hana, HI 96713
observingmaui@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Mary McClung:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments and concerns in opposition to Alexander and Baldwin’s proposal to further divert stream water from East and West Maui streams. I have been a resident and concerned citizen practicing natural farming in Kīpahulu since 1999, including successfully dryland farming (non irrigated crops, based on rainfall) bananas with my husband Corey Law (who grew up flood irrigation farming in Central Valley Calif). Protecting the integrity of Maui’s aquifer and restoration of Maui ecosystems should be top priorities to local and state government officials, businesses, agriculture enterprises, residents and visitors alike, because without it, we all will suffer greatly.*

Response 1: We acknowledge your comments and concerns in opposition of the Proposed Action, and that in your view protecting the integrity of Maui's aquifer and the restoration of ecosystems should be a top priority for the State. It is also understood that you are commenting as a concerned citizen who practices farming in Kīpahulu. Please note that the Proposed Action does not affect Kīpahulu, which is beyond the eastern terminus/end of the EMI Aqueduct

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System. The Proposed Action impacts a portion of East Maui, Upcountry Maui, and Central Maui as described in Chapter 4 of the EIS.

Regarding your comment about Maui's aquifer and restoration of Maui's ecosystems, as discussed in Chapter 5 of the EIS, the Proposed Action is supportive of a number of the State's priorities including growing diversified agriculture, increasing local food production, and managing access to State lands which prevents the spread of invasive species thus preserving ecosystems. Additionally, the Proposed Action would contribute to recharge of the Central Maui aquifers as discussed in EIS Section 2.1.4 and Section 4.2.2. Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the water lessee and DLNR to jointly develop and implement a watershed management plan. On October 11, 2019, after the publication of the Draft EIS on September 23, 2019, the BLNR approved the minimum content requirements for a watershed management plan. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. A copy of the BLNR-approved DLNR report is enclosed as Appendix O-1. The BLNR delegated authority to the DLNR staff to jointly develop watershed management plans with water lessees to ensure that the watershed management plan aligns with the goals of watershed protection to maintain watershed function and water yield and to restore or maintain a certain level of biological integrity that is the foundation of a healthy watershed.

Comment 2: *According to the USGS publication on estimating groundwater of Maui as of August 16, 2019, "Demand for freshwater on the island of Maui is expected to increase by 45% between 2015 and 2035. Wetter and drier climate scenarios impact the availability of the groundwater to meet this demand...estimates of groundwater recharge are needed." <https://pubs.er.usgs.gov/publication/sir20195064>*

This publication was written in partnership with the County of Maui Water Supply and others. This points out inadequate information available to even consider a 30 year lease. Any lease must be for less water than has been taken in the past, and on a year to year basis. This option has to be seriously included in your draft EIS.

Response 2: Regarding your comment that the Water Lease must be for less water than has been taken in the past, that is exactly what is being proposed under the Proposed Action. Specifically, Section 2.1.2 of the Draft EIS states:

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However, the amount of water that may be diverted should the Water Lease be issued is substantially less than the amount that was diverted during normal sugar production. For example, in 2006 it is estimated that the EMI Aqueduct System delivered approximately 156.69 mgd at Maliko Gulch, whereas under the CWRM D&O, it is estimated that the delivery at Maliko Gulch will be approximately 92.32 mgd (Akinaka, 2019).

The median flow required by the CWRM D&O provides an estimated available median flow at Honopou Stream of 87.95 mgd, where the EMI Aqueduct System leaves the License Area. Beyond the License Area, the diverted streams only provide supplemental ditch flow when License Area diversions are low. The amount that can be added is relatively low because when rainfall is high in East Maui, the ditches are fuller and there is little needed to supplement the flow. And, when rainfall is low in East Maui, the streams west of Honopou Stream have less flow in them as they are in an area that receives less rainfall than areas further east. During drier (low flow) periods, it is estimated that 4.37 mgd is available to supplement the EMI Aqueduct System between Honopou Stream and Maliko Gulch. With this added flow, the estimated median flow available beyond Maliko Gulch for use in Upcountry Maui and the Central Maui fields is estimated to be 92.32 mgd (Akinaka, 2019).

Hence, under the Proposed Action, the amount of water diverted will be significantly less than past diversion amounts during sugarcane operations.

Regarding your comment that the Water Lease should be on a year-to-year basis, please note that shorter Water Lease durations were considered within the EIS in Section 3.2.2.1 and throughout Section 3.4 of the EIS. Specifically, Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing

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successful diversified agricultural operations and crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

Hence, a shorter lease term could limit the ability to successfully implement the Mahi Pono farm plan, which is inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui. However, the terms and conditions of the Water Lease are at the discretion of the BLNR.

The United States Geological Survey (USGS) report you cited in Comment #2 states that between 2015 and 2035, it is expected that the demand for potable water from the County of Maui County Department of Water Supply (MDWS) will increase 45% from 33.5 million gallons per day (mgd) to 48.5 mgd. However, the report does not go into the breakdown of aquifer use and future demand and what aquifers will be the most affected by the projected increase in demand. The USGS report only identifies certain aquifer sectors and aquifer systems that will experience either increases or decreases due to climate projections. In the scenarios presented in the USGS report, the aquifer systems in the Ko‘olau Aquifer Sector are projected to see some of the largest increases in recharge, whereas aquifer systems in the Central Aquifer Sector are projected to see decreases in recharge due to changes in rainfall patterns from future climate change trends. However, please note that under the Proposed Action, surface water is diverted from the East Maui License Area (which lies largely over the Ke‘anae, Waikamoi and Honopou aquifers in the Ko‘olau Aquifer Sector (See EIS Figure 4-17), to the Central Maui agricultural fields, which largely lie over the Pā‘ia Aquifer in the Central Aquifer Sector (See EIS Figure 4-18). As detailed in Section 4.2.2 of the EIS, the groundwater pumpage within the Ko‘olau Aquifer Sector is far below the Sustainable Yield (SY). This section of the EIS also addresses the anticipated impacts to the Central Aquifer Sector from the conveyance of East Maui surface water to Central Maui for irrigation purposes. Section 4.2.2 of the EIS has been updated to reflect your comment regarding the USGS report, as shown on page 4-71 for East Maui and page 4-76 for Central Maui.

Regarding the Central Aquifer, the cited USGS report anticipates that there will be decreases in recharge due to changes in rainfall patterns from future climate change trends. However, as discussed in Section 4.2.2 of the Draft EIS:

SY does not account for water transfers, including surface water conveyed to the Central Maui Aquifer Sector from the Ko‘olau Aquifer Sector by the EMI Aqueduct System. Such imported water for irrigation flowing past the root zone of crops enters the aquifer from which it can be pumped and reused. According to the Draft Maui Island Water Use and Development Plan (March 2019), the

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“impact on ‘available’ groundwater that can be extracted from the Kahului and Pā‘ia aquifers from irrigation return flow is highly uncertain since the cessation of sugarcane cultivation in 2016” (p. 18). The plan further notes that there are no monitoring wells in the Central Aquifer Sector to gage water level changes over time. Nevertheless a simulated scenario in a 2008 USGS study suggests that the complete removal of irrigation return recharge would decrease water levels and increase salinity in the Central Maui Aquifer Sector (Akinaka, 2019).

Hence, the Central Aquifer Sector has generally low SY numbers. However, the numbers do not take into account the recharge that occurs from system losses (i.e., water lost to seepage and evaporation, and including other water uses, such as water used for reservoirs, fire protection, dust control, and hydroelectric uses) from the Central Maui Field Irrigation System within the Central Maui agricultural fields. Some portion of this seepage would enter the Pā‘ia, and Kahului, and Ha‘ikū aquifers, and some amount of the water used for irrigation would seep past the root zone and also enter the aquifers. Little is known about the exact relationship between the irrigation return water and how much could be reused as groundwater. However, the use of East Maui surface water to irrigate the Central Maui agricultural fields has long supplemented the underlying aquifers, and a similar relationship will continue under the Proposed Action, essentially constituting a beneficial impact to the Central Maui aquifers, particularly the Pā‘ia and Kahului aquifers, albeit at a smaller scale than when sugarcane was being cultivated. Thus, under the Proposed Action, it is assumed that at full operation of the Mahi Pono farm plan, system losses within the Central Maui agricultural fields would add to the recharge of the aquifers underlying the Central Maui agricultural fields as discussed in Section 4.2.2 of the EIS regarding Central Maui groundwater, updated as shown on pages 4-74 to 4-77.

Regarding your comment that the EIS has inadequate information to consider a water lease, we believe that the EIS contains sufficient information for the Board of Land and Natural Resources (BLNR) to consider a long-term water lease.

It is also understood that notwithstanding any changes to stream flows due to climate change, the Water Lease will have to adhere to the Interim Instream Flow Standards (IIFS) set forth in the Commission on Water Resources Management Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O). Impacts to the License Area due to climate change are discussed in more detail in Section 4.3 of the EIS.

Comment 3: *Restoring ecosystems can play a part in replenishing the aquifer. And the aquifer is an invisible and somewhat mysterious force that all residents and visitors, present and future depend on. We cannot afford to make mistakes going forward that put our freshwater lens at*

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risk. We already know that the water tables have been dropping to below half of what it was since it was first being measured.

Response 3: Your comments are acknowledged, however you did not specify what aquifer you are referring to. It is generally known that restoring the ecosystem can replenish the aquifer, increase recharge rates, and the amount of groundwater (Adane et. al, 2018, *Impact of grassland conversion to forest on groundwater recharge in the Nebraska Sand Hills*, Journal of Hydrology: Regional Studies, Volume 15) As discussed in Section 4.2.2 of the EIS, use of East Maui surface water is not expected to have any significant impact on reducing the amount of groundwater available within the freshwater lens underlying the License Area. In fact, as discussed in Response #2, the Ko‘olau Aquifer Sector is expected to see an increase in groundwater from recharge rates due to changes in rainfall patterns from future climate change trends as noted by the USGS report you cited in Comment #2. Thus, the Proposed Action would have even less of an impact on groundwater in East Maui as more water is anticipated to be recharged into the ground in the Ko‘olau Aquifer Sector.

In the Central Maui Aquifer Sector, it is anticipated that recharge rates and the SY will decrease due to changes in rainfall patterns which may further decrease the amount available for pumpage. Since the use of East Maui surface water to irrigate the Central Maui agricultural fields has long supplemented the underlying Central Maui aquifers, it is expected that a similar relationship will continue under the Proposed Action, essentially constituting a beneficial impact to the Central Maui aquifers, albeit at a smaller scale than when sugarcane was being cultivated.

Your comment about the water tables dropping below half of what it was since it was first measured is unclear, as you do not describe specifically where, or what measurements you are relying on. It is our understanding that water tables have not dropped as you have described in East Maui, Upcountry Maui, or Central Maui—the areas of study for this EIS. However, it can be noted that the SY for the entire island of Maui has decreased over the years. By comparing the CWRM’s 1987, 2008 and 2018 maps of SY for the island of Maui, it shows an overall decrease of 25 mgd from 452 mgd (1987) to 427 mgd (2008), then a decrease of 70 mgd from 427 mgd (2008) to 357 mgd (2018) for the entire island of Maui.

Comment 4: *I have several relevant points I am petitioning to be included in your analysis which are either missing or lacking in discussion, consideration and data in the Draft EIS.*

~ UH scientists have concluded that Hawaiian islands will continue to experience less and less tradewinds and rainfall due to climate change. We are already noticing a drop in rainfall and less tradewinds. The draft EIS needs to use the most up to date predictive climate science when

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considering future rainfall. <https://www.hpr2.org/post/planet808-examining-climate-change-islands#stream/0>

Response 4: It is not clear from your comment what, if any, aspect of the brief audio clips from a radio program that you cited you believe are relevant to the EIS and therefore we cannot comment on those clips. However, we note that the EIS does include the most recent information regarding climate change within its analysis. As discussed in Section 4.3.1 of the Draft EIS:

Regular trade winds are key in driving the Hawai‘i’s hydrological cycle, generating rainfall which helps maintain Maui’s water supply. However, a recent study showed that Hawai‘i’s trade winds have decreased in frequency by approximately 30% over the past 37 years, from 291 days per year in 1973, to 210 days per year in 2009 (Garza et. al, 2012). The decrease in the trade winds could have serious implications for the Hawaiian Islands, including adversely impacting local agriculture, native ecosystems and endangered species, and the State’s limited freshwater supply.

Overall, the State of Hawai‘i is experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014)...

Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. Such rainfall patterns increase the amount of stormwater runoff flowing through the region, including through the streams within the License Area that reach the shoreline. The expected climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. (SE & MRC, 2019).

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Hence, the EIS recognizes that the State of Hawai‘i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall. However, as noted in the USGS report cited in Comment #2 and as discussed in Response #2, East Maui could see an increase in rainfall.

Section 4.3.1 of the Final EIS has been expanded to include information from the archeological literature review and field inspection (LRFI) report (Appendix E), the Cultural Impact Assessment (CIA) report (Appendix F), and the Terrestrial Flora and Fauna Technical Report (Appendix C) prepared for this EIS as shown on pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Comment 5: *Due to this uncertain future of rainfall, we would be prudent to mitigate the great risk of compromising our freshwater lens by safeguarding Maui’s future water supply and aquifer as much as possible. Any lease should be for a short period of time, smaller amount of water, and have requirements of proof of good management practices in good in order to be considered for renewal. The Draft EIS should include these public good options.*

Response 5: Regarding your comment about a Water Lease for a shorter period of time and smaller amount of water, please refer to Response #2 above. Also, in response to your comment on the Water Lease being for a smaller amount of water, please note that Section 3.2.1 of the EIS addresses a Reduced Water Volume alternative and Section 3.3 addresses a No Action alternative, both of which are for smaller amounts of water than the Proposed Action, and a comparative evaluation of those alternatives is provided throughout Section 3.4 of the EIS. Moreover, please note that the terms and conditions of the Water Lease are at the discretion of the BLNR.

It is not clear from your comment how you view the length of the Water Lease as a matter to be dictated by climate change. As discussed in Section 4.2.2 of the EIS, the freshwater lens in East Maui (the location of the License Area where majority of water would be diverted) is not anticipated to experience adverse impacts as a result of the Proposed Action.

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It is also not clear from your comment what "good management practices" you believe should be a requirement of the Water Lease. However, the EIS describes various measures to mitigate impacts within the License Area. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area in East Maui. These impacts are related to various aspects of the natural environment. For stream habitat impacts, there will be a reduction from natural flow conditions, which can be mitigated by adjustments in diversions to minimize entrainment or increases in stream flow. For native terrestrial flora and fauna resources, as well as historic and archeological resource, there is anticipated to be impacts from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; impacts to cultural resources and practices due to access or restriction of access can be mitigated by a myriad of recommendations proposed by CSH as discussed in Section 4.6; and community concerns and perceptions as discussed in Section 4.7.2 of the EIS can be mitigated by further public outreach and consultation.

Moreover, as discussed in Response #1 above, the Water Lease lessee will be subject to all applicable requirements of HRS § 171-58 regarding watershed management plans.

In addition to recommended measures for the License Area, the EIS also describes water conservation practices planned and/or underway by Mahi Pono within the Central Maui agricultural fields. Mahi Pono expects to invest over \$20 million to increase the efficiency of its private Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown on page 2-25.

Mahi Pono has also implemented several water saving strategies for the Central Maui agricultural fields and continues to evaluate additional methods. Mahi Pono water saving strategies include the following:

- Planting windbreaks in the fields.
- Incorporating significant uses of weed mat along plant lines, which will reduce evapotranspiration and erosion.
- Mowing rather than plowing inter-rows to preserve organic matter and keep cover to prevent soil erosion.

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- Operating within the terms of a Conservation Plan from NRCS, which includes swales and diversions for erosion protection,
- Practicing rotational grazing of livestock,
- Planting permanent tree crops that will develop canopies that will assist with soil moisture retention and reduce evapotranspiration.

Comment 6: ~ *Streambeds are the most effective place for water to filter down into the Earth, replenishing the aquifer as they have for millennium. When a stream is dry, no water is filtering down in this way. The draft EIS needs to address this impact on our precious island aquifer.*

Response 6: The EIS does address impacts to groundwater aquifers. Please refer to Responses #2 and #3 above. Furthermore, the IIFS established under the CWRM D&O requires full restoration of 10 streams within the License Area, and partial restoration for biological reasons to several other streams within the License Area. You did not identify any streambed that you believe will be dry under the Proposed Action, therefore we cannot respond with any greater specificity. You also did not specify which Maui aquifer you are referring to. However, as explained in Response #2, groundwater levels in East Maui are expected to be greater than historic levels due to increased recharge from stream restoration actions under the CWRM D&O. In addition, the Ko‘olau Aquifer Sector is expected to see an increase in groundwater from recharge rates due to changes in rainfall patterns from future climate change trends. Thus, the Proposed Action would have even less of an impact on groundwater as more water is anticipated to be recharged into the ground.

Comment 7: ~ *As freshwater streams flow into the ocean, there is an increase of fish and diversity at the stream mouth. This benefits fishermen as well as serving the greater pelagic fish populations with ample nutrition. This impact needs to be taken into account. No water should be taken from East or West Maui streams until Mauna to Makai flow is reestablished. This is becoming general knowledge.*

Response 7: Your comments in response to the Proposed Action are acknowledged. For clarification, the Proposed Action does not involve any diversions from West Maui streams. The EMI Aqueduct System diverts water exclusively from East Maui.

It is generally known that flow from mountain to ocean can provide environmental benefits. In the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A), the HSHEP Model was used to quantify the impacts of flow restoration on native stream animal habitat which provides data that can assist decision makers to understand how impacts could change across different diversions scenarios. The mauka-to-makai connection is

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integral to the design of the HSHEP model in estimating the impacts of stream diversions on native species habitat. Impacts to stream habitats and native amphidromous stream species are analyzed in Section 4.2.1 and Appendix A of the EIS. Under the Proposed Action, habitat units (HU) are expected to increase compared to historical diversion rates during sugarcane operations. However, as stated in Section 4.2.1 of the EIS, habitat units would decrease by approximately 36.1% when compared to a theoretical natural flow scenario, where no water was diverted from the License Area (theoretical because even under the No Water Lease scenario, the EMI Aqueduct System would continue to divert 30% of the water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS requirements). Please note that the report in Appendix A has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats which is also reflected in Section 4.2.1 of the Final EIS, as shown on pages 4-56 to 4-67.

Regarding the impacts to coastal waters and nearshore environments, these are analyzed in Section 4.2.3 and Appendix B (East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry) of the EIS. The survey conducted for that assessment provided data to indicate that stream-delivered nutrients do not extend to pelagic areas (pelagic is defined as "open ocean"). The study suggests that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, because the nutrient concentrations in the ocean do not change substantially due to stream diversions as proposed under the Water Lease, there is no pathway for fishing to be negatively impacted. This analysis means that impacts to ocean fish from the Proposed Action are negligible.

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may

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have a small estuarine reaches, Pa‘akea will have connectivity flow restoration, while ‘O‘opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi‘ina‘au Stream) have estuarine reaches, four of which were noted by Trutta’s HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR’s methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi‘ina‘au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa‘akea) have connectivity flow restoration ordered. Pa‘akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83 of the Final EIS.

Regarding your comment about an increase in fish and diversity, unfortunately there is no actual scientific data relative to the interplay between diversions by the EMI Aqueduct System and fish populations. However, some who commented on the Draft EIS and/or participated in the CIA, stated that they have noted an increase in fish populations returning to the nearshore coastal environments since the cessation of , since the halting of diversion after the closing of HC&S commercial sugar operations in Central Maui in late 2016. This information has been added to Section 4.6 of the Final EIS as shown on page 4-168.

Comment 8: ~ *The original lease agreement was written as allowing diversion only AFTER the land and the people have their share. Yet A & B continued to increase the size, substantiality,*

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and number of the flumes to the point of running several streams completely dry for numerous decades, and in the Draft EIS, it is stated that their damaged streams should be a new baseline for any future agreement. This shows a lack of regard on the part of A and B for following any restrictions the state might place on a future water lease. How will records be made available to the public to prove responsible management of the EMI and stream systems.

Response 8: It is unclear what you mean by the "original lease agreement." The Kingdom of Hawai'i granted the first license in 1876 to A&B and its partners to develop what became the EMI Aqueduct System and divert water from East Maui, as discussed in Section 1.3.2 of the Draft EIS. A&B entered into subsequent agreements with the Kingdom of Hawai'i, then the Territory of Hawai'i, and the State of Hawai'i permitting diversions of the East Maui surface water, and it is understood that A&B complied and operated within the terms of those previous agreements.

We respectfully disagree with your comment that the Draft EIS states "damaged streams" should be a new baseline for any future lease agreement. First, HAR § 11-200-17(g) requires that an EIS describe the environmental setting "as it exists before commencement of the action." Second, there appears to be a misunderstanding regarding the use of the upper and lower boundaries applied to the HSHEP model for the assessment of impacts to the native amphidromous stream species. The application of the HSHEP model uses the two boundaries for assessment: the "Full Diversion Condition" (the lower boundary) and the "Natural Condition" (the upper boundary). The combination of the lower and upper bounds provides the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as, by definition, the changes must fall somewhere between 100% diversion and 0% diversion. The two scenarios presented, the Proposed Action compliant with the CWRM D&O (Trutta's 2018 IIFS scenario) and No Action alternative (30% remaining flow diversion), are examples of how different flow restoration scenarios result in different amounts of habitat units. The HSHEP model is used to quantify these differences based on flow restoration changes at diversions. The HSHEP follows a logical approach and systematically addresses on-the-ground conditions.

Regarding your comment asking how records will be made public, reports submitted to State agencies are considered public records that may be requested pursuant to the Uniform Information Practices Act, HRS Chapter 92F. Reporting to State agencies is required under the water Revocable Permits and under the CWRM D&O, and similar reporting requirements may be required under the Water Lease. As discussed in Sections 4.2.1 and 4.6 of the EIS, the CWRM D&O requires EMI to report on changes in stream diversions and ditch settings as irrigation requirements increase. EMI also maintains a system of optical encoders with float tape

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and data loggers within the EMI Aqueduct System. The information obtained is reported to CWRM on a monthly basis.

Comment 9: ~ *Corporations have as their top legal priority to make the shareholders as much money as they can. Legally they cannot have a different top priority, such as the public good, even when managing a commons. This alone should make it clear that any water flowing out of Maui streams needs to be managed by the state, not a private interest business. The draft EIS needs to include a serious option for state management.*

Response 9: Your comment suggests a fundamental misunderstanding of the facts. The proposed Water Lease, if issued, will be issued by the BLNR, a State agency. As such, the BLNR will have the opportunity and the obligation to assess the request for a Water Lease through all appropriate considerations, including the Public Trust Doctrine, and establish the terms by which it is willing to issue the Water Lease.

Under the Public Trust Doctrine, BLNR will have to balance competing considerations before making a decision on the Water Lease. The balancing that BLNR is required to perform under the Public Trust Doctrine was described at length by the Hawai'i Supreme Court in *In Re Water Use Permit Applications*, 94 Hawai'i 97, 9 P. 3d 409 (2000) (Waiahole I) and summarized in Section 1.5 of the Final EIS as shown on pages 1-25 to 1-27.

Contrary to your comment, please note that Section 3.1.2 of the Draft EIS considered alternative ownership of the EMI Aqueduct System. However, a change in ownership is too speculative at this point to warrant further analysis beyond what is already in the EIS. Moreover, there is no information provided regarding this speculative alternative to suggest that it would enhance environmental quality or avoid, reduce, or minimize all or even some of the adverse environmental effects, costs, or risks of the Proposed Action. Please note that Section 3.1.2 of the Final EIS has been supplemented to acknowledge the County of Maui, Board of Water Supply Temporary Investigative Group (TIG) Report dated October 17, 2019 that was made available after the publication of the Draft EIS, as shown on pages 3-19 to 3-20. Moreover, a copy of the TIG Report is provided as Appendix Q to the Final EIS. However, as discussed in both the Draft EIS and the Final EIS, this alternative continues to appear speculative and not consistent with the objectives of the Proposed Action.

Regarding your comment about profits being the top priority of corporations, we note that companies can also be rated by their attention to and investment in social issues such as environmental protection, diversity and inclusion, treatment of employees, etc. as well as their financial performance.

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Comment 10: ~ *As we saw when the streams were not flowing, they get hugely overgrown with thick brush, invasive species and bramble. That makes it impossible for people including cultural practitioners to travel via the waterways, which is supposed to be a right protected by state law. This impact was not and needs to be addressed in the Draft EIS, and is part of why the streams need to continue to flow 24/7.*

Response 10: Regarding your comment about streams when there is no flow and become overgrown with vegetation, this is generally acknowledged and understood that negative impacts occur on species habitat and passage. As stated in EIS Section 4.2.1, it is possible for streams to be dewatered if diversions were permitted to take all flow under low flow conditions. Under full diversion conditions (which is far in excess of what is proposed for the Water Lease), the number of stream habitat units available is reduced by approximately 49.9% from the theoretical full natural flow condition, where no water is diverted from the License Area. However, the Proposed Action proposes diversion amounts significantly less than the full diversion scenario.

With regard to the potential effects of the Proposed Action on traditional and customary practices, as discussed in the Hawai'i Supreme Court decision, *Ka Pa 'akai O Ka 'Āina v. Land Use Commission*, 94 Hawai'i 31 7 P. 3d 1068 (2000), it is acknowledged that BLNR will be required to "to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *Ka Pa 'akai*, 94 Hawai'i at 35, 7 P. 3d at 1072. BLNR has previously so stated in its Findings of Fact, Conclusions of Law, and Decision and Order filed on March 23, 2007 in the contested case proceeding that is still pending regarding the Proposed Action (the 2007 D&O) as follows:

Public trust principles require that adequate provision be made for the protection of ***traditional and customary Hawaiian rights***, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture and navigation.

2007 D&O COL No. 6 at page 41 (emphasis added).

The State's constitutional obligation to consider the impacts of stream diversions in East Maui on traditional and customary practices of Native Hawaiians is also addressed at pages 242 through 245 of the CWRM D&O, including the Supreme Court of Hawai'i's more recent holding on this subject in *State v. Pratt*, 127 Hawai'i 206, 277 P. 3d 300 (2012). The CIA assessed the impacts, alternatives, and measures to mitigate impacts of the proposed Water Lease on the cultural resources, practices and beliefs identified through this process. The assessment includes discussion of potential impacts on the following: 1) regional environment; 2) taro farming; 3) freshwater ecosystems; 4) cultural sites; 5) access by cultural practitioners; and 6) climate

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change. CSH then developed recommendations for mitigation based upon CSH's expertise, research and input received during the CIA consultation process, and based upon other technical studies that have been prepared for the EIS. Section 4.6 of the Final EIS has been supplemented with a more detailed discussion of the matters above. See pages 4-239 to 4-252 of the Final EIS.

As discussed in Section 4.6 of the Final EIS, public access to the License Area is currently limited to permitted access by hunting groups and hiking clubs. Should the Water Lease be issued, CSH recommended that public access for practitioners be via a similar process to what is used for hiking groups. EMI has confirmed that no individual that has approached EMI regarding access for cultural purposes has ever been denied access. See pages 4-239 to 4-252 of the Final EIS.

Comment 11: ~ *There is a local freshwater fish which actually climbs waterfalls several hundred feet high in order to return home and breed. The Hawaiian Goby fish have suction cup feet and are considered of special importance to the scientific as well as the Hawaiian communities. They are present in several East Maui streams, and could be reestablished wherever they have died out due to A and B draining the streams over the last 130 years. These need to be included in the Draft EIS.*

Response 11: Please note that the Hawaiian Goby fish was included in the HSHEP model included in the report attached as Appendix A to the EIS, which is also summarized in Section 4.2.1 of the EIS. Specifically, the HSHEP model developed habitat suitability indices for the following species: O'opu nākea (*Awaous stamenius*); 'O'opu alamo'o (*Lentipes concolor*) (the Hawaiian Goby fish); 'O'opu naniha (*Stenogobius hawaiiensis*); 'O'opu nōpili (*Sicyopterus stimpsoni*); 'O'opu akupa (*Eliotris sandwicensis*). For specific HU change for the Hawaiian Goby fish, please refer to Appendix 3 of Appendix A of the Final EIS. Under the Proposed Action, overall HU are expected to increase regionally compared to historical diversion rates during sugarcane operations. However, as stated in Section 4.2.1 of the EIS, habitat units would decrease by 36.1% when compared to a zero diversions scenario. It is important to recognize that the accumulation of HU for amphidromous species is additive, meaning that a single unit of stream may have a total HU in excess of the stream area quantified. In other words, if HU for multiple non-competitive species in a given area are added together, the combined HU could be greater than the area. This is important when considering the total HU for all eight amphidromous species in a stream as the total HU for all eight species may be greater than the total stream area.

Comment 12: ~ *There are native birds that likely have been impacted also. Not only the forest birds who would not have year round access to freshwater when the streams are dried up, but*

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also coastal birds that evolved to depend on the ecosystem being intact. Birds and other fauna, esp native Hawaiian ones need to be seriously surveyed comparing intact streams vs the EMI damaged ones. Restoration of the mountain to ocean flow would clearly help restore damaged ecosystems due to the last 130 years of taking more than was originally intended by the agreement. This sustained flow to the ocean needs to be part of the Draft EIS.

Response 12: Regarding your comment about the impacts on native birds, these are discussed in the report in Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS, which is summarized in Section 4.4.2 of the EIS. Specifically, Section 4.4.2 of the Draft EIS states:

*The birds observed in the License Area are species commonly found in low- to mid-elevation mesic and wet forest areas on the northern slope of Haleakalā Volcano. In all, nine bird species were documented, six of which are protected by the Migratory Bird Treaty Act (MBTA). Of these, three species—‘apapane (*Himatione sanguinea*), Hawai‘i ‘amakihi (*Chlorodrepanis virens wilsoni*), and ‘i‘iwi (*Drepanis coccinea*)—are endemic to Hawai‘i; one is a migratory shorebird and two are non-native introductions. The ‘i‘iwi is the only federally and state-listed bird that was detected during ground surveys and was identified by vocalizations. In addition to ‘i‘iwi, the federally and state-listed Maui parrotbill (*Pseudonestor xanthophrys*) and crested honeycreeper (*Palmeria dolei*) are known to occur in mesic and wet forest above approximately 3,937 feet (1,200 meters [m]).*

Regarding the impacts of the Proposed Action, Section 4.4.2 been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS. See pages 4-129 to 4-131 of the Final EIS. Moreover, Section 4.4.2 of the Final EIS has also been expanded to include a discussion regarding potential impacts of avian malaria as shown on pages 4-129 to 4-131.

As it relates to impacts to other fauna species within the License Area, these are also discussed within Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS, which is summarized in Section 4.4.2 of the EIS. Specifically, Section 4.4.2 of the Draft EIS states:

*Introduced mammals observed include cow (*Bos taurus*), feral pig (*Sus scrofa*), and feral cat (*Felis catus*). No other mammals were observed during the ground surveys, although rat (*Rattus spp.*), mongoose (*Herpestes javanicus*), and mouse (*Mus musculus*) could be expected to occur.*

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No terrestrial reptiles or amphibians are native to Hawai‘i. No terrestrial reptiles or amphibians were detected during the ground surveys...

*Twelve invertebrates were observed during the surveys, consisting of the Blackburn’s damselfly (*Megalagrion blackburni*), Hawaiian upland damselfly (*Megalagrion hawaiiense*), citrus swallowtail butterfly (*Papilio xuthus*), Monarch butterfly (*Danaus plexippus*), housefly (*Musca domestica*), smaller lantana butterfly (*Strymon bazochii*), mud dauber (*Sceliphron caementarium*), wandering glider (*Pantala flavescens*), green darner (*Anax junius*), *Aedes* mosquito (*Aedes* sp.), walking stick (*Sipyloidea sipyilus*), and witch moth (*Ascalapha odorata*). All these invertebrates are common in East Maui.*

The Proposed Action is not anticipated to have a significant impact on special-status fauna species or invertebrates potentially within the License Area. Nevertheless, Section 4.4.2 provided measures to minimize any potential impacts which has been updated based on feedback provided by the DLNR and USFWS as shown on 4-129 to 4-131.

Regarding your comment about flow from mountain to ocean restoring the ecosystem, this is generally understood. As discussed in Responses #8, #10, and #11 above, the impacts of the Proposed Action fall between two of the scenarios analyzed in the HSHEP Model: the Full Diversion and Natural Condition scenarios. Hence, the Proposed Action will provide beneficial impacts regarding habitat units when compared to past diversion amounts during sugarcane operations but, will negatively impact potential habitat units when compared to a theoretical condition where no water is diverted.

Regarding your comment about A&B taking more water than what was originally intended in the agreements, as discussed in Response #8 above, it is understood that A&B complied and operated within the terms of those previous agreements.

Regarding your comment about sustained flow from the streams entering the ocean being a part of the EIS, this is discussed in Section 4.2.3 of the EIS and in Response #7 above. The survey conducted for that assessment provided data to indicate that stream-delivered nutrients do not extend to pelagic areas (pelagic is defined as “open ocean”). The study suggests that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, because the nutrient concentrations in the ocean do not change substantially due to stream diversions as proposed under the Water Lease, there is no pathway for fishing to be negatively impacted. This analysis means that impacts to ocean fish from the Proposed Action are negligible.

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Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui due to the steep terrain of the streams that flow from the License Area as shown on pages 4-78 to 4-83.

Comment 13: ~ *Modern soil science is realizing how the microbiology in the soil affects the robustness of the surrounding forest tree and plant communities. The microbiology cannot live where the soil is dried out. This issue is also not addressed, but needs to be.*

Response 13: It is not clear from your comment where you anticipate soils to be dried out due to issuance of the proposed Water Lease. Within the Central Maui agricultural fields, Mahi Pono does not employ any agricultural practice intended to “dry out” the soil. Mahi Pono endeavors to clear, plow fields to turn the soil, and incorporate soil amendments (i.e., compost) only in anticipation of planting. Impacts to soil are discussed in Section 4.1.2 of the EIS. Additionally, it is assumed that the microbiology of the License Area is in good condition as it is considered a pristine environment with limited human activity. Moreover, regarding your comment about the soil being dried out, some regions of East Maui receive over 300 inches of rain annually as discussed in Section 4.3.1 of the EIS. Under the Proposed Action, soil conditions are anticipated to remain the same.

Comment 14: ~ *Diagrams showing specifically where Nahiku water comes from and how much need to be included in the Draft EIS. Records show that underground tunnels naturally feed the Nahiku intake pipe and there is no shutoff. So the claim that Nahiku would be at risk of losing their water if the proposal from A and B stream flow is not accepted seems to be a scare tactic, and if so, another strike against them for irresponsibly “yelling fire in a crowded theater” only for their gain.*

Response 14: We acknowledge your comments. In response to your comment requesting diagrams specifically showing where Nāhiku water comes from, please see page 2-23, which Figure 2-6 has been added to the Final EIS. Please note, the description of the Nāhiku water service from Section 2.1.3.3 of the Draft EIS, has been revised to take into account clarifications from the MDWS after the publication of the Draft EIS, as shown on pages 2-21 to 2-22.

According to MDWS, EMI's Nāhiku Tunnel is the sole source of water for the MDWS Nāhiku Water Service Area. It is also our understanding that EMI developed and owns the Nāhiku Tunnel. Per a 1973 Memorandum of Understanding, as amended, MDWS can draw up to 20,000 gallons of water per twenty-four hour day to serve the Nahiku community. EMI continues to deliver water to the MDWS for the Nāhiku community pursuant to the agreement. However, that continued delivery is premised upon EMI's continued receipt of permits or a lease from the State BLNR.

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Comment 15: ~ *Upcountry water also needs specific details. Again, contrary to statements made in the Draft EIS, records show that Upcountry is served water via the County pipes. Only in times of drought have they gotten some water via EMI. These records and numbers need to be included for consideration of alternatives to EMI water for Upcountry.*

Response 15: There appears to be a misunderstanding on where the water comes from that the County uses to supply its Upcountry Maui Water System. You are correct that Upcountry users on the MDWS system are served by County pipes, but these pipes only distribute water from the source. The main sources of water for the Upcountry Maui DWS system are surface water sources that are delivered by the EMI Aqueduct System or arise on EMI lands along with some well (ground) water. Thus water “from EMI” is consistently provided to the Maui DWS to service Upcountry Maui and in fact these surface water sources (stream water), particularly the source delivered by the EMI Aqueduct System, serve an even more important role during times of drought.

Specifically, Section 2.1.3.1 of the Draft EIS explains that the MDWS Upcountry Maui Water System relies on three surface water sources, which accounts for approximately 80-90 percent of water delivered through the Upcountry Maui Water System. One of the three surface water sources is delivered directly by the EMI Aqueduct System, through the Wailoa Ditch. Average daily use by the MDWS from the Wailoa Ditch is about 7.1 mgd. Please note that Section 2.1.3.1 has been clarified in the Final EIS to more accurately describe the Upcountry Maui Water System. See pages 2-13 to 2-20 of Final EIS.

The other two surface water sources are not supplied by the EMI Aqueduct System, but are fed by streams located on lands owned by Mahi Pono / EMI. See page 2-13 of the Final EIS.

Hence, all of the surface water delivered to the Upcountry Maui Water System is either supplied by water that originates from the License Area, which is conveyed by the EMI Aqueduct System via the Wailoa Ditch, or from private land. This surface water accounts for approximately 80-90% of all water delivered in the Upcountry Maui Water System. The remaining 10-20% of water delivered comes from a series of basal aquifer wells in Upcountry Maui.

It is assumed in the alternatives addressing reductions in water amounts authorized for diversion, the current agreements in place with MDWS would either be terminated or the amount that MDWS would receive would be less, thereby impacting the users of the MDWS Upcountry Maui Water System.

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Comment 16: ~ *Also regarding Upcountry water, several well projects have already been taken on, and oughtn't to be so readily dismissed as an option. Upcountry wells and other options need to be included in the Draft EIS.*

Response 16: The Upcountry Maui Water System is solely the responsibility of the County. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including the approximately 30,000 acres of agricultural fields in Central Maui. The EMI Aqueduct System also supplies water to the MDWS. Whether and how MDWS may wish to pursue new sources of water for the Upcountry Maui area is beyond the scope of this EIS and is too speculative for detailed analysis.

However, we are currently not aware of any wells or alternative water sources being planned in Upcountry Maui nor are there any permits on file for new wells by MDWS for the Upcountry Maui Area. Moreover, MDWS has indicated that it has no current or anticipated expansion or improvement plans for the MDWS system within the EIS areas based on additional consultation with MDWS after the publication of the Draft EIS. The letter dated July 24, 2020 from MDWS indicating this has been added to the Final EIS as Appendix P. Furthermore, as discussed in Section 2.1.3.1 of the EIS, any new well development by MDWS would be subject to fiscal and environmental barriers and the constraints of the 2003 Consent Decree between the County of Maui and the Coalition to Protect East Maui Water Resources, Hui Alanui o Makena, Sierra Club and Mark Sheehan. The costs of any new well development would also be passed on to the Upcountry Maui consumers. See Section IV.A of Appendix H (Economic and Fiscal Impact Assessment).

Comment 17: ~ *Kula Ag Park was promised to become 300 acres, yet the Draft only mentions 80. Why the discrepancy? Please include information about this in the draft EIS and include 300 acres in an alternative proposal. We have youth on Maui learning to farm who cannot afford land. The Ag Park would provide an affordable option for them as well as more seasoned farmers who just need access to more land because they are so successful.*

Response 17: Your comment that the Draft EIS only mentions an 80-acre Kula Agricultural Park (KAP) is incorrect. Draft EIS Section 2.1.3.2 explains that the KAP is managed by the County of Maui, Office of Economic Development to promote the development of diversified agriculture on the island of Maui, and that KAP consists of 31 farm lots ranging from 10 to 30 acres and totaling 445 acres. Furthermore, EIS Section 2.1.3.2 of the Final EIS has been revised to explain

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that in 2018, A&B sold 262 acres to the County for the expansion of the KAP and agreed to supply the MDWS with surface water from the EMI Aqueduct System to meet the needs of the KAP expansion area, subject to the continuation of State permits or issuance of the Water Lease as shown on pages 2-20 to 2-21 (for clarification, the Draft EIS contemplated the 262-acre KAP expansion but the particular details are now provided in Section 2.1.3.1). Therefore, under the Proposed Action, it is assumed that the 262-acre KAP expansion would receive water from the EMI Aqueduct System.

Comment 18: *~ Acreage in East Maui suitable for growing taro or truck crops is grossly underestimated in potential productivity and number of acres. There are many hidden loi in the forests alongside streams which can be restored to growing taro and other indigenous crops. The local model for this is the Kipahulu Ohana who has been partnering with the National Park and restored many stream fed indigenous loi and crops in previously overgrown loi alongside Oheo Gulch. According to a UH Manoa report released 2-26-2019, titled "Indigenous Agriculture has the Potential to Contribute to Food Needs Under Climate Change", there is the potential for restoring 250,000 acres of traditional agroecosystems, producing more than 1 million metric tons annually. They advise, "plans to meet food self-sufficiency goals must consider how climate change will affect agricultural viability". See AAAS and Eureka Alert*

Response 18: Regarding your comment that the acreage in East Maui suitable for growing taro or truck crops is grossly underestimated, please note that for the analysis included in Appendix I and summarized in Section 4.7.4, taro farms in East Maui (from Honopou to Nāhiku), including use of water from streams not subject to the CWRM D&O, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. This acreage is assumed for the Proposed Action and all associated alternatives since nearly all potential new taro cultivation is assumed to draw water from fully restored taro streams which will have the same flows under all alternatives. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O "will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ..." (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM

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D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Regarding your comment about there being many hidden lo‘i in the forests along streams, please note that these were not included in the analysis as we are not aware of these hidden lo‘i. Moreover, your comment does not provide specificity as to where these hidden lo‘i are.

Your comment about the local model made by Kipahulu Ohana that restored many lo‘i alongside Ohea Gulch is acknowledged. However, as mentioned above, we are not aware of hidden lo‘i in East Maui.

Regarding your comment about the UH Mānoa report titled “Indigenous Agriculture has the Potential to Contribute to Food Needs Under Climate Change,” please note that this report generally speaks about the State as a whole and is not focused on East Maui. Moreover, it is our understanding based on the analysis in the Agricultural and Related Economic Impacts report (Appendix I) and as summarized in Section 4.7.4 of the EIS, that it is assumed that all or nearly all of the farming, taro and truck farming, would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams ordered for full restoration.

Comment 19: ~ *There is not adequate explanation of why the same amount of water to “responsibly” farm the proposed 15,000 acres is exactly the same as A&B took to farm 30,000. It should be less than half, based on a responsible choice to conserve water, and choose less thirsty crops. Detailed explanation rather than broad sweeping statements about quantities needed should be included as well as earnest actions in dryland farming crop choices.*

Response 19: It is unclear why you stated that Mahi Pono would farm only 15,000 acres of land. As shown on Table 2-1 of the Draft EIS, the Mahi Pono farm plan covers some 30,000 acres of land in Central Maui. At full operations, the Mahi Pono farm plan is projected to use 85.22 mgd of surface water (before Central Maui Field Irrigation System losses) to farm approximately

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30,000 acres in Central Maui. This is stated in Section 2.1.2 in the EIS. In contrast, HC&S used on average 165 mgd as discussed in Section 2.1.4 of the EIS. Thus, Mahi Pono's projected water use, at full operations, is approximately half of what was used to farm sugar, consistent with your statement. Please note that Table 2-1 (Table 2-2 in the Final EIS) has been revised as shown page 2-29 of the Final EIS and shows the water requirements of the proposed crops. Moreover, as discussed in Response #5 above, Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Hence, the use of the surface water will also be more efficient under the Proposed Action compared to usage during sugarcane operations.

Regarding the choice of crops, as explained in Section 2.1.4 of the Draft EIS the Mahi Pono farm plan is a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community. Moreover, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Comment 20: ~ *Trails should be included, whether for the public or for responsible educational and conservation groups to manage. These are not private lands, these are huge swaths of public land and the public should have reasonable access. Several groups such as Na Hele On Trails, Sierra Club, and more would be good at providing oversight as well as potential service trips. This option needs to be included in the Draft EIS.*

Response 20: As discussed in Section 4.8 of the Draft EIS, access to the Ko'olau Forest Reserve Hunting Units, which include portions of the Huelo, Honomanū, Ke'ānae, and Nāhiku portion of the License Area, is managed by the Department of Land and Natural Resources (DLNR) Division of Forestry and Wildlife. In order to hunt in these areas, hunters must first obtain a license from the DLNR and an EMI Permit / Waiver. Access to the hunting units is managed by EMI through eight existing access roads. Hunters are permitted to enter the areas by vehicle but must traverse most areas by foot. Hiking is also a permitted recreational use within the License Area. Hiking access requires a Hiking Waiver from EMI. However, please note that Section 4.8

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of the Final EIS has been updated to include additional discussion on recreational facilities and access into the License Area as it relates to recreational activities as shown on pages 4-305 to 4-309.

With regard to the historic trails and roads that are within the License Area, Section 4.5 of the Final EIS as well as Appendix E (Archaeological Literature Review and Field Inspection report) have been revised to include the current inventory of roads and trails in the License Area as shown on pages 4-147 to 4-149. CSH completed a geographic analysis of trails and roads that appear on maps of the License Area. This analysis is limited to trails and roads that were depicted on maps between 1869 and 1992 and available to the public domain. This analysis is also limited to only the roads or trails that extend within the License Area. The majority of roads and trails within the License Area are associated with access to the EMI Aqueduct System. Figure 4-39 has been added to the Final EIS to correspond with the above text (Figure 48 in Appendix E). See pages 4-147 to 4-149 of the Final EIS.

Comment 21: ~ *Every Maui tour brochure for the Hana Hwy shows picturesque taro loi in Keanae and waterfalls galore. Yet the taro is a fraction of what it could be because so many people have had to move away after the water was no longer flowing well. And same goes for the awesomeness of the waterfalls. Impacts on tourism of running streams dry do not seem to be explored substantially.*

Response 21: As noted throughout the EIS, at a minimum the Water Lease would be subject to the IIFS set forth in the CWRM D&O, which ordered increased stream flows in numerous of the East Maui streams. The D&O ordered all diversions to stop on 10 streams, which were identified as taro streams. See EIS Section 1.3.4. The IIFS set under the CWRM D&O also ordered significant returns in stream flow to several other of the East Maui streams that are diverted by the EMI Aqueduct System. We note that the IIFS set under the CWRM D&O expressly took into account “Aesthetic values such as waterfalls and scenic waterways.” This is reflected in Findings of Fact made by CWRM in the CWRM D&O as follows:

When setting IIFS, the information that is considered in connection with aesthetic values such as waterfalls and scenic waterways is the presence of scenic views, waterfalls and whether there is tourism in the area. CWRM D&O FOF 70.

Aesthetics is a multi-sensory experience related to an individual’s perception of beauty. As a subjective value, aesthetics cannot be quantitatively determined. Elements, such as waterfalls and cascading plunge pools that appeal to an observer’s visual and auditory senses. CWRM D&O, FOF 71.

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Anticipated impacts related to tourism are discussed in Section 4.9 of the EIS. Specifically, Section 4.9 of the Draft EIS states:

Several scenic view planes can be found within the vicinity of the License Area. Specifically, the License Area is located along the slopes of Haleakalā in East Maui, and affords views of the ocean to the north and the peak of Haleakalā to the south. The scenic drive along the Hāna Highway was recognized in 2000 when President Clinton designated the Hāna Millennium Legacy Trail. The following year it was listed in the National Register of Historic Places. The drive along Hāna Highway is notable for views of waterfalls, including those in streams flowing out of the License Area.

The designation of the scenic drive along the Hāna Highway as the Hāna Millennium Legacy Trail was made during the time of sugarcane cultivation and greater streamflow diversions. However, there have also been observed changes to visual resources in East Maui since the cessation of sugarcane activities in Central Maui as well as increases in daily visitors to the East Maui region. However, please note that Section 4.9 of the Final EIS has been expanded to further discuss scenic vistas, cascading waterfalls, and stream flow in East Maui, as shown on pages 4-311 to 4-312.

Comment 22: ~ *Crop choices are a concern. Responsible sustainable farming that you claim to be supportive of is farming based on rainfall and soil types. Your choices of citrus, cattle are not low water use. Whereas growing market demand would point to planting such crops as coconuts, dates and others. Getting creative, surely with your sales resources, you could create a brand for Maui Plumeria, Best lei in the Islands, perfumes etc for instance. And other drought tolerant crops. Think how your boulevards could be lined with fragrant varietal and historic plumeria, everyone driving by would have to have one! Your plumeria tours would pay more than the farming. Neem trees could be grown for their fertilizer potential and double benefit the surrounding area by increasing permeability and it is cooler in the shade. It is also a medicinal plant, known in Kenya as marobaini meaning forty, because it has 40 different medicinal uses. It is also well recognized in India and beginning to be researched in the West. Draft EIS needs to include responsible and innovative crop choices such as these.*

Response 22: Many crops can be grown in Hawai‘i, but relatively few can be grown at a scale and cost that compete with low-cost volume producers on the mainland, Mexico and elsewhere. For many crops, the Hawai‘i market is too small for economies of scale, and shipping costs and delivery times are a disadvantage for exports. Please note that Mahi Pono’s farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard

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crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community.

The crops in Mahi Pono's farm plan were chosen with the goal of increasing Hawai'i's food independence while also meeting criteria for commercial viability and potential. Mahi Pono's farm plan is described in Section 2.1.4 of the EIS. Citrus, row crops, and cattle – all crops included in Mahi Pono's farm plan would accomplish this goal more effectively than the planting of dates, coconuts, plumeria, and neem. The per-acre water requirement for Mahi Pono's cattle ranching operation is expected to be significantly less than the per-acre water requirement typically associated with growing diversified row crops in Hawai'i. The per-acre water requirements for the various crops planned by Mahi Pono are shown Table 2-2 of the Final EIS based on the analysis in the Agricultural and Related Economic Impacts report attached as Appendix I to the EIS.

Comment 23: ~ *There is a gaping hole when it comes to identifying soil types and arable quality across the land in question. The Draft EIS needs to spell out via maps and charts which and how many acres of land are poor arable lands, etc. This information should be available to you because soil types on Maui were well studied and documented, and would be a first step in any good farm plan.*

Response 23: Please note that all of the soil types within the Central Maui agricultural fields and the License Area are documented within Section 4.1.2 of the EIS as well as each soil type's characteristics. Section 4.1.2 of the Draft EIS provides a discussion of three soil classification studies, as follows:

- The U.S. Department of Agriculture (USDA) (2001) Soil Survey Geographic (SSURGO) database and soil survey data gathered by Foote et al. (1972);
- The Hawai'i Land Study Bureau (LSB) Detailed Land Classification, Island of Maui (LSB bulletin no. 7, 1967) and depicted online at the Hawai'i LSB Locator-ARC GIS by the Hawai'i Statewide GIS Program, Office of Planning; and
- The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Classification System, which was developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), and the College of Tropical Agriculture, University of Hawai'i.

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Section 4.1.2 of the Draft EIS includes descriptions of these various soil classification systems with regard to agricultural potential in Central Maui. Specifically, Section 4.1.2 of the Draft EIS, with regards to Central Maui, states:

According to the LSB Detailed Land Classification, Island of Maui (1967), the agricultural fields of Central Maui that were previously cultivated in sugarcane have an overall productivity rating of A-Excellent (See Figure 4-15). The southern end of the agricultural fields, which is at the farthest reach of the Central Maui field irrigation system is largely rated E-Very Poor with patches of B-Good. The northeastern end of the agricultural fields west of Maliko Gulch includes land rated C-Fair and D-Poor.

According to the ALISH map, the agricultural fields of Central Maui are predominantly classified Prime Land (See Figure 4-16).

Section 4.7.4 of the Draft EIS includes a discussion summarizing a report by Plasch Econ Pacific LLC on Agricultural and Related Economic Impacts (June 2019). The report assesses the economic agricultural impacts of the Proposed Action and is included as Appendix I in the Draft EIS. In Section 5 of Appendix I of the Draft EIS, the agricultural productivity of the 30,000 acres in Central Maui was discussed based on the soil rating systems of the three aforementioned studies. Although this portion of the report was not summarized in Section 4.7.4 of the Draft EIS, it has been in the Final EIS, as excerpted on pages 4-295 to 4-297 to this letter.

As shown on pages 4-295 to 4-297 and as documented in Appendix I of the Draft EIS, the overwhelming majority of the Central Maui agricultural fields are considered to be highly productive with irrigation water. However, with less water available, less acreage would be rated as high-quality farmland.

Hence, as mentioned in Appendix I of the Draft EIS:

Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

Please note that the above has been added to Section 4.7.4 of the Final EIS as shown pages 4-295 to 4-297. Moreover, the overwhelming majority of the Central Maui agricultural fields (approximately 80%) are rated by the UH LSB as having the highest Overall Productivity Rating

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of "A" (on a scale of "A" to "E" with "E" being the lowest soil rating), and a little over 11% has a "B" rating. In other words, about 27,567 acres (90.9%) are high-quality lands rated A or B. The ALISH Classification System, developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - NRCS, and the College of Tropical Agriculture, University of Hawai'i. Approximately 25,669 acres of the Central Maui agricultural fields are classified under the ALISH system as "Prime", which means "agricultural land which is land that is best suited for the production of crops because of its ability to sustain high yields with relatively little input and with the least damage to the environment."

Furthermore, as discussed in Section 5.1.4 of the EIS, approximately 22,000 acres of the Central Maui agricultural fields were designated by the State Land Use Commission as Important Agricultural Lands (IAL) under HRS Chapter 205. In order to qualify as IAL land must be, among other things: (1) capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology; (2) contribute to the state's economic base and produce agricultural commodities for export or local consumption; or (3) are needed to promote the expansion of agricultural activities and income for the future, even if not currently in production. As stated in HRS Chapter 205: "The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations."

Although it is not clear from your comment what area soils you are concerned with, and the EIS does not contemplate farming within the License Area, we note that information regarding soils in the License Area is provided in EIS Section 4.1.2 by four areas: Huelo, Honomanū, Ke'anae, and Nāhiku. A detailed description of the types and characteristics of the soils found within the four portions of the License Area is included in Section 4.1.2 of the EIS. The distribution of these soils in East Maui is illustrated in Figures 4-5 through 4-10.

Comment 24: ~ *County Plan guidelines state a goal of 5 mgd of reclaimed water to be used. No mention is found, it is currently missing from your review and needs to be addressed.*

Response 24: Your comment regarding the "County Plan guidelines state a goal of 5mgd of reclaimed water to be used" is unclear. We are unaware of any County plan guidelines that state this. However, please note that the availability of the use of reclaimed water from the Wailuku-Kahului Wastewater Reuse Facility (WWRF) is discussed in Draft EIS Section 3.1.1.2 (Reclaimed Water), which provides an analysis of the feasibility of the use of reclaimed water from the Wailuku-Kahului WWRF to irrigate the Central Maui agricultural fields. As discussed,

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the recycled water alternative using existing R-2 water from the Kahului WWRF could be considered an alternative as a supplemental source. However, R-2 water has limited usability on crops. Based on State of Hawai'i Department of Health regulations and requirements regarding the use of R-2 recycled water, it can be used for subsurface irrigation of crops such as fruit trees where the edible portion has minimal contact with the recycled water. Thus, R-2 recycled water could be appropriate for timber and non-food crops. R-2 recycled water could be further treated to R-1 recycled water, however, the use of R-1 waters on food crops also carries a negative stigma from a commercial marketing perspective. DEM has expressed a desire to upgrade the Wailuku-Kahului WWRF to provide R-1 treatment, however, the upgrade has not been funded and is speculative at this time. Furthermore, any upgrade to the Kahului WWRF would provide, at best, only 5.5 mgd of R-1 treated waters and would require the installation of a transmission line to convey the water to the Central Maui agriculture fields. Additionally, adverse environmental impacts are associated upgrading the Kahului WWRF, which is located in a hazardous and exposed location, at the front of a tsunami floods zone and a 3.2 feet sea level rise exposure area. Further consideration of this alternative has been included in Chapter 3 of the Final EIS, which has also been supplemented with a discussion about the potential new reuse/effluent disposal facility in Central Maui to be located south-west of the Kahului WWRF that is being considered by the County DEM. See pages 3-9 to 3-11 of the Final EIS.

Comment 25: ~ *Management part of the plan should have some details in the Draft EIS. Any other person applying for a state lease has to show in detail how they plan to manage it and improve the land. Usually includes restoring native species.*

Response 25: Your comment about "management part of the plan" in Comment #25 is unclear. However, as discussed in Response #1 and #5 above, the lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans.

Comment 26: ~ *Consider taking a page from Ulupalakua Ranch and work with Art Medieros and Auwahi to not only restore native forests, but increase soil permeability, and perhaps even rainfall in these areas. Their work has been scientifically studied and documented to prove increase in soil permeability in adjacent land due to dryland forest restoration. See these two important documents:*

<https://static1.squarespace.com/static/573a2a872fe131b2351c0330/t/575a2ea927d4bd5d73013749/1465527980840/Perkins+et+al.-2012+Geophysical+Research+Letters.pdf>

<https://static1.squarespace.com/static/573a2a872fe131b2351c0330/t/575a2a6f27d4bd5d73012392/1465526976183/Perkins+et+al+2014+EcoHydro.pdf>

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Restoring of native habitats and forest should definitely be part of the Draft EIS. Art Medieros is the most knowledgeable one to advise where and how much land should be allocated.

Response 26: We acknowledge your comments above and we have to assume you are referring to land in East Maui (the location of the proposed Water Lease) as that is the only area under consideration where a forest is located. However, that area does not have the characteristics of a dryland forest. East Maui is considered a rainforest environment as it is one of the wettest places on the island, as well as the State. Moreover, as described in Section 6.2 of Appendix C of the Final EIS (Terrestrial Flora and Fauna Technical Report) it is noted that the Central Maui agricultural fields would be mostly grasses in its natural state (i.e., no agricultural activity) with the potential to give rise to some woody species.

Please note that Section 4.4.1 of the EIS describes the flora in East Maui. The survey in Appendix C conducted by SWCA found that the License Area is comprised of primarily open and closed 'ōhi'a forest accounting for over 60% of the vegetation in the surveyed areas of East Maui. Non-native (Alien) Forest accounts for 23% of the vegetation in the License Area. Uluhe-dominated slopes and wet cliff areas were also observed in the License Area.

Regarding the documents in the links provided in Comment #26, please note that these are not applicable to the Proposed Action as they are focused on Auwahi, located in South Maui, which is a completely different environment and climate from the License Area and the Central Maui agricultural fields.

Comment 27: *~ You say the water table has gotten saline, some of your wells have been compromised and gotten saline. This is a definite concern for everyone on Maui. How much could this be due to commercial fertilizer salt that has gone down into the aquifer in this area, or overuse of groundwater? Artesian springs in Wailuku have dried up. This just points to how critical it is for Maui to focus on replenishing our aquifer. We cannot afford to abandon land or wells due to irreversible damage of any more rise in salinity and compromise of the irreplaceable freshwater lens. In India, whole villages have been abandoned because of that. In California's Central Valley, the wells are all going dry, so there is a race to drill deeper and deeper wells. Then those wells go dry, and they don't stop drilling, they just dig in and drill more furiously than before. The large corporate agribusiness that moved into the area recently has kept all the well drilling rigs busy at their place while neighbor's fruit trees have had to be cut down due to death by non-irrigation. At this point the land is actually sinking because the aquifer has shrunk so intensely. There are innovative ways to respond.*
<https://www.sacbee.com/news/california/big-valley/article229148999.html>

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Response 27: The groundwater wells discussed in the EIS are in Central Maui. The salinity of groundwater in Central Maui is a function of (1) the underground flux of fresh water from adjoining aquifers, (2) seepage of rainfall and irrigation water into the ground (groundwater recharge), and (3) groundwater pumping. During the waning years of sugarcane, the salinity of the groundwater in Central Maui increased because (1) stream restoration and drought reduced the supply of surface water for irrigating sugarcane and, in turn, reduced groundwater recharge; and (2) groundwater pumping of brackish water was increased to compensate for the reduction in fresh surface water that would have otherwise been provided from the East Maui streams. We have no information to suggest that the increase in salinity was in any way related to the use of fertilizers. Please note that Mahi Pono has no current plans to drill new wells and that is not considered a feasible alternative as discussed in Section 3.1.1.1 of the EIS.

Please note that no existing wells owned by Mahi Pono are planned to be abandoned as part of the Proposed Action. As discussed in Section 2.1.4 of the Draft EIS, there were 15 brackish water wells that served the Central Maui agricultural fields when they were in sugarcane. Section 2.1.4 of the Final EIS has been updated to reflect that Mahi Pono only has access to 10 of those brackish water wells. See page 2-25 of the Final EIS. A discussion regarding the salinity of these wells is provided in EIS Section 4.2.2, as discussed in Response #29 below.

Comment 28: ~ *There are crops that tolerate salt. Coconuts are one. An exploration of potentials for these plants should be explored. http://www.biosalinity.org/salt-tolerant_plants.htm*

Response 28: Please note that the crops in Mahi Pono's farm plan were chosen with the goal of increasing Hawai'i's food independence while also meeting criteria for commercial viability and potential. Those priorities outweighed the potential of a farm plan that consists entirely of salt-tolerant crops. As discussed in Response #22 above, attempts to grow coconut have met with limited commercial success and was not chosen to be a part of the Mahi Pono farm plan.

Comment 29: ~ *Details of well water tests should be presented in the Draft EIS and considered including dates and any specifics about presence of salts and chemicals such as 24D etc which were used by A and B.*

Response 29: Regarding your comment about well water tests for the Mahi Pono wells, please see the table below, which has been added to Section 4.2.2 of the Final EIS as shown on page 4-75.

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State Well No.	TMK Number	Installed Pump Capacity (MGD)	Typical Range of Chlorides (MG/L) from 2003 through 2014¹	CWRM Delineated Aquifer System
4825-001	(2) 3-8-004:001	20.448	225 to 350	Pā'ia
5226-002	(2) 3-8-006:001	24.048	350 to 550	Kahului
5224-002	(2) 3-8-003:004	15.120	350 to 550	Pā'ia
5323-001	(2) 3-8-001:006	20.016	No data	Pā'ia
5424-001	(2) 3-8-001:007	5.760	400 to 700	Pā'ia
5522-001	(2) 2-5-005:021	8.640	350 to 525	Pā'ia
5422-001	(2) 2-5-005:054	10.080	350 to 525	Pā'ia
5422-002	(2) 2-5-005:020	11.664	325 to 475	Pā'ia
5321-001	(2) 2-5-005:019	30.240	400 to 1600	Pā'ia
5520-001	(2) 2-7-004:032	10.080	900 to 1600	Ha'ikū

Please note that the salinity levels fluctuate and therefore a range was provided.

Moreover, please note that Section 2.1.4 has been revised in the Final EIS to more accurately describe the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono, and clarifies that only 10 of the 15 wells are on Mahi Pono lands and thus available for use by Mahi Pono, as shown on page 2-25.

The reference to 15 brackish wells was derived from the CWRM D&O, FOF 738, as that was the number of brackish wells that A&B utilized during its sugar cane operations. However, one of the 15 wells referred to, State Well No. 5128-002, does not serve the Central Maui agricultural fields and four of the other brackish wells are on lands that are not owned by Mahi Pono. As such, Mahi Pono has access to only 10 such wells. Draft EIS Figure 2-5 has been revised, as shown on page 2-24 to more accurately depict the water infrastructure within the Central Maui

¹ There is limited salinity data prior to 2003 and after December 2014, surface water for irrigation use rapidly declined as A&B ramped down operations prior to closing in 2016.

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agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields.

Comment 30: *Thank you for this opportunity to submit my comments on, observations of and concerns about this draft EIS. I would like to hear your responses, ideas and changes to the Draft EIS which includes these valid and important concerns.*

Response 30: Please note that we have updated the Final EIS as applicable, and the Final EIS includes your comments and this response letter. Thank you for your participation in this EIS process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.² Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

² Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Matt Rosener <laminarmatt@gmail.com>
Sent: Thursday, November 7, 2019 5:00 PM
To: Public Comment; ian.c.hirokawa@hawaii.gov
Subject: comments submitted on EMI water lease draft EIS
Attachments: North Shore Hydro comments on EMI draft EIS 11-7-2019.pdf

Dear Mr. Hirokawa and Mr. Matsukawa,

Please find attached my comments in regards to the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas - Draft Environmental Impact Statement (DEIS).

Respectfully,

Matt Rosener
Hydrologist / Water Resources Engineer
Port Angeles, WA / Hanalei, HI

North Shore Hydrological Services

Matt Rosener, MS, PE, Principal

November 7, 2019

Mr. Ian Hirokawa
State of Hawaii – Department of Land and Natural Resources – Land Division
1151 Punchbowl Street – Room 220
Honolulu, HI 96813

Mr. Earl Matsukawa AICP
Wilson Okamoto Corporation
1907 S. Beretania Street, Suite 400
Honolulu, HI 96826

Dear Mr. Hirokawa and Mr. Matsukawa,

I am hydrologist and professional water resource engineer who has been working on stream and watershed management issues throughout the Hawaiian Islands for 15 years now. I am presently leading a watershed restoration program at Waipa, on the north shore of Kaua'i, and I am involved in hydrologic studies related to streamflow restoration campaigns on Kauai and Maui. In the past, I have worked as a hydrologist for the U.S. Geological Survey (USGS) and under a research appointment through the University of Hawai'i, and I have worked as a water resource engineer for the USDA Natural Resources Conservation Service as well as private engineering firms. I now operate my own business, consulting on various water and watershed management projects and studies. This letter is intended to express professional opinions and submit specific questions that I have related to the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas – Draft Environmental Impact Statement (DEIS), dated September 2019. I appreciate the opportunity to review the subject document, and I respectfully present the following comments, questions, and concerns.

First, I object to any long-term water lease being issued by the State of Hawai'i until the subject of watershed management costs for the water lease areas is addressed. At this juncture, watershed management in Hawai'i is in great need of improvement. With certain groups excepted (e.g. The Nature Conservancy), there is not much active watershed management happening in the mauka portions of our drainage basins that I can see. The state Department of Land and Natural Resources – Division of Forestry and Wildlife (DLNR – DOFAW) is responsible for this task on the majority of our state Forest Preserve lands that make up much of the watershed area in urgent need of active management. Unfortunately, this agency is grossly under-funded to carry out such a massive responsibility, and they badly need funding assistance from other entities that would benefit from active watershed management practices. It makes perfect sense that water lessees that extract large volumes of freshwater from our forested watersheds for various uses help to bear the brunt of this burden. The state of Hawai'i has yet to develop a cost-share formula for this purpose, but once it does, water diverters like East Maui Irrigation (EMI) and Mahi Pono, LLC (MP) should be prepared for the substantial expenses associated with implementing watershed management plans in rugged and remote areas.

North Shore Hydrological Services

Matt Rosener, MS, PE, Principal

Also, the water lease unit rates that large water diverters in Hawai'i typically pay are much lower than market value rates in many other states. It seems that a market analysis is warranted in order to establish the fair market value of Hawai'i's water resources. This leads to the following question: how can EMI and MP properly evaluate the economics of their requested 30-year water lease from the East Maui license areas when they don't know what their projected costs will be for water lease rent and their portion of the cost-share arrangement for implementation of watershed management plans? This seems like a cart-before-the-horse scenario to me. With the prices that the state of Hawai'i is charging for control of this critical resource being so much less than those in other states, it makes one wonder if this proposed long-term water lease could be a water grab by an opportunistic foreign entity (MP). Of course, this is the last thing Hawai'i needs in regards to water resource management.

My specific questions about the DEIS and the proposed long-term water leases are as follows:

1. What is the current rate that EMI / MP pay to the State of Hawaii for their Revocable Permit(s) for water diversion from the East Maui license areas? I have been given some information about this topic, and I would like to confirm its accuracy.
2. What is the status of the water lease applicant in regards to any watershed management plan(s) that might satisfy the state's requirement for a long-term water lease?
3. What are the average Operations and Maintenance costs for the entire EMI water aqueduct system?
4. In regards to the "utility scale renewable energy component" of the MP Farm Plan, what amount of water (on average) is anticipated to be used from the EMI aqueduct system for hydropower generation?
5. Is the requested long-term water lease for all water from East Maui streams in excess of the recently-mandated Interim Instream Flow Standards? Or is there a maximum amount associated with the lease application?

I encourage EMI and MP to continue working towards instream flow restoration in waterways that now have IIFs in East Maui. I also encourage EMI and MP to continue working with the East Maui communities to build trust, based on actions and not only words. Mahalo for the opportunity to review the DEIS and ask the questions above. I will appreciate responses with clear and thorough information so that I may better evaluate the proposed water lease

Respectfully,



Matt Rosener, P.E.

Hydrologist/Water Resources Engineer



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Mr. Matt Rosener
North Shore Hydro
P.O. Box 1189
Hanalei, HI 96714
laminarmatt@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Matt Rosener:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am hydrologist and professional water resource engineer who has been working on stream and watershed management issues throughout the Hawaiian Islands for 15 years now. I am presently leading a watershed restoration program at Waipa, on the north shore of Kaua‘i, and I am involved in hydrologic studies related to streamflow restoration campaigns on Kauai and Maui. In the past, I have worked as a hydrologist for the U.S. Geological Survey (USGS) and under a research appointment through the University of Hawai‘i, and I have worked as a water resource engineer for the USDA Natural Resources Conservation Service as well as private engineering firms. I now operate my own business, consulting on various water and watershed management projects and studies. This letter is intended to express professional opinions and submit specific questions that I have related to the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas - Draft Environmental Impact Statement (DEIS), dated September 2019. I appreciate the opportunity to review the subject document, and I respectfully present the following comments, questions, and concerns.*

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Response 1: We acknowledge your comments and understand that you are commenting based on your professional background as a hydrologist and experience with stream and watershed management issues throughout the State.

Comment 2: *First, I object to any long-term water lease being issued by the State of Hawai'i until the subject of watershed management costs for the water lease areas is addressed. At this juncture, watershed management in Hawai'i is in great need of improvement. With certain groups excepted (e.g. The Nature Conservancy), there is not much active watershed management happening in the mauka portions of our drainage basins that I can see.*

Response 2: We acknowledge your comments. As discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Furthermore, the lands under the jurisdiction of the East Maui Watershed Partnership span over 100,000 acres which includes the entire License Area. The License Area is actively managed by the multiple agencies and organizations, including EMWP, Maui Invasive Species Committee (MISC), DLNR, etc., in partnership with EMI.

Comment 3: *The state Department of Land and Natural Resources – Division of Forestry and Wildlife (DLNR – DOFAW) is responsible for this task on the majority of our state Forest Preserve lands that make up much of the watershed area in urgent need of active management. Unfortunately, this agency is grossly under-funded to carry out such a massive responsibility, and they badly need funding assistance from other entities that would benefit from active watershed management practices. It makes perfect sense that water lessees that extract large volumes of freshwater from our forested watersheds for various uses help to bear the brunt of*

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this burden. The state of Hawai'i has yet to develop a cost-share formula for this purpose, but once it does, water diverters like East Maui Irrigation (EMI) and Mahi Pono, LLC (MP) should be prepared for the substantial expenses associated with implementing watershed management plans in rugged and remote areas.

Response 3: Regarding your comment about *the* State Department of Land and Natural Resources – Division of Forestry and Wildlife being grossly underfunded, please note that is outside the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS.

However, it is expected that a budget for management of the License Area lands for watershed productivity will be part of fulfilling the watershed management plan requirement under HRS § 171-58. There are many existing mauka watershed plans, including those implemented by the State's Division of Forestry and Wildlife (DOFAW) and groups like the Watershed Partnerships. As discussed in Section 2.1 of the Draft EIS, A&B was a founding member of the East Maui Watershed Partnership (EMWP), which was the first watershed partnership in the State of Hawai'i and which served as a model for other watershed partnerships throughout the State. In reviewing existing watershed management plans in general, however, DLNR has recently determined that some of the existing watershed plans are not always directly correlated to the water lease area and some plans are old and outdated. In certain places, new threats to watershed health are not addressed in existing watershed plans. Additionally, DLNR determined that estimated budgets in such existing plans may not reflect the current cost of management if the plan is over 5 years old. As such, DLNR will work with proposed water lessees to determine if any existing plan meets the minimum content requirements and sufficiently addresses the protection of watershed forests and fresh water resources in the License Area. If it does not, DLNR will work with the lessee to determine the specific actions needed and jointly develop a new plan or update the existing plan as noted in Response #1 above. It should be noted that the existence of a watershed management plan does not absolve a water lessees' duty to help with the implementation of management actions. A lessee must provide DLNR proof that it is already contributing to the protection of the watershed, and membership in a Watershed Partnership may not fulfill the requirement of implementation.

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DLNR and a water lessee will jointly develop a watershed management plan that cites existing management plans, meets the minimum content requirements, and outlines what reasonable management practices are needed for the water lease area and the current estimated costs associated with implementation. The new plan will be specific to the watershed(s) associated with the lease (the sources that feed the lease area) and management will be based on current estimated costs. One of the required elements of a watershed management plan is a budget, which entails a) an estimate of costs and categories of expenditures needed; and b) potential sources of funding for implementing the actions. See on pages 2-2 to 2-4 of the Final EIS.

Comment 4: *Also, the water lease unit rates that large water diverters in Hawai'i typically pay are much lower than market value rates in many other states. It seems that a market analysis is warranted in order to establish the fair market value of Hawai'i's water resources. This leads to the following question: how can EMI and MP properly evaluate the economics of their requested 30-year water lease from the East Maui license areas when they don't know what their projected costs will be for water lease rent and their portion of the cost-share arrangement for implementation of watershed management plans? This seems like a cart-before-the-horse scenario to me. With the prices that the state of Hawai'i is charging for control of this critical resource being so much less than those in other states, it makes one wonder if this proposed long-term water lease could be a water grab by an opportunistic foreign entity (MP). Of course, this is the last thing Hawai'i needs in regards to water resource management.*

Response 4: Please note that an appraisal to determine the fair market value of the Water Lease will be conducted prior to issuance of the Water Lease. The Department of Land and Natural Resources (DLNR), on behalf of the Board of Land and Natural Resources, will commission or approve the commissioning of the appraisal. The Economic and Fiscal Impact Study (Appendix H) prepared for the Draft EIS calculated the Water Lease payment based on the equivalent per unit cost under the existing 2019 revocable permit. As discussed in Section 4.7.3 of the Draft EIS

The revocable permit rent payment set in November 2018 was \$230,964.24, which represents an increase from the rent that was historically paid. Assuming 16.8 mgd was diverted in 2019 from the License Area under the revocable permit, the rent rate would translate to \$0.038 per thousand gallons.

However, please note that this discussion in Section 4.7.3 of the Final EIS has been updated to take into account the latest equivalent per unit cost under the latest revocable permit as shown on pages 4-277 and 4-283.

Comment 5: *My specific questions about the DEIS and the proposed long-term water leases are as follows:*

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What is the current rate that EMI / MP pay to the State of Hawaii for their Revocable Permit(s) for water diversion from the East Maui license areas? I have been given some information about this topic, and I would like to confirm its accuracy.

Response 5: As noted above, in Section 4.7.3 of the Final EIS has been updated to take into account the latest equivalent per unit cost under the latest revocable permit as shown on pages 4-277 and 4-283. Hence, EMI pays \$238,362 which represents an increase from the rent that was historically paid. Assuming 32.3 mgd is diverted under the 2021 revocable permit, the Water Lease rent rate would translate to \$0.019 per thousand gallons. This rate of \$0.019 is assumed as the basis for the future annual Water Lease payment to the DLNR.

Comment 6: *What is the status of the water lease applicant in regards to any watershed management plan(s) that might satisfy the state's requirement for a long-term water lease?*

Response 6: As noted in Response #2 above, Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Comment 7: *What are the average Operations and Maintenance costs for the entire EMI water aqueduct system?*

Response 7: As noted in pages 4-277 and 4-283 of the Final EIS, total operational costs for EMI labor, fringe benefits, materials, professional services, taxes, Water Lease, and other expenses are projected to be \$2.22.3 million per year. This would translate to \$0.066 per kgal. A currently unknown factor in EMI's operating cost is the annual Water Lease payment to DLNR.

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Comment 8: *In regards to the “utility scale renewable energy component” of the MP Farm Plan, what amount of water (on average) is anticipated to be used from the EMI aqueduct system for hydropower generation?*

Response 8: Please note that under the Proposed Action the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O which is estimated to be approximately 87.95 mgd from the License Area, and an additional 4.37 mgd between Honopou Stream and Māliko Gulch for a total of 92.32 mgd. As noted in Section 2.1.4 of the Final EIS, this water would also be for use in Central and Upcountry Maui. Those uses included the MDWS’ take for its Kamole-Weir WTP and the KAP and use by Mahi Pono and its lessees for agricultural, reservoir, and industrial needs (including dust control, hydroelectric, and fire suppression needs).

Comment 9: *Is the requested long-term water lease for all water from East Maui streams in excess of the recently-mandated Interim Instream Flow Standards? Or is there a maximum amount associated with the lease application?*

Response 9: Please note that under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O.

Comment 10: *I encourage EMI and MP to continue working towards instream flow restoration in waterways that now have IIFSs in East Maui. I also encourage EMI and MP to continue working with the East Maui communities to build trust, based on actions and not only words.*

Response 10: We acknowledge your comments. Please note that the SIA, as well as Section 4.7.2 of the EIS recommends that there be community outreach by the Applicant. However, terms of the Water Lease are at the discretion of the BLNR, and the Water Lease lessee will comply with all such terms.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC’s website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Letter to Mr. Matt Rosener
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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Sent: Tuesday, October 8, 2019 10:44 AM
To: ALOHA ALOHA; Public Comment
Cc: Vincent Mina; Dashiell Kuhr
Subject: RE: Alexander & Baldwin long term water lease draft EIS comments

Dear Mr. Van Paepeghem,

Thank you for your comments on the Draft EIS. For future reference, please send any comments to the applicant as well. Their contact email is:

waterleaseeis@wilsonokamoto.com

Thank you,
Ian Hirokawa

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

From: ALOHA ALOHA <mvpepper11@gmail.com>
Sent: Sunday, October 6, 2019 11:07 AM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Cc: Vincent Mina <hfuu1@hawaii.rr.com>; Dashiell Kuhr <dash.kuhr@gmail.com>
Subject: Alexander & Baldwin long term water lease draft EIS comments

Aloha,

On Behalf of the Hana Chapter of the Hawaii Farmers Union United and our approximately 75 active members who are farmers and farm supporters in East Maui, at our General Membership meeting held on Wednesday, October 3, our membership agreed on the following position regarding the Alexander & Baldwin long term water lease draft EIS:

The Hana Chapter opposes any water lease without a clear farm plan showing specific need for water usage.

Sincerely,

Matthew Van Paepeghem
President, Hana Chapter, Hawaii Farmers Union United

Sent from my iPad



WILSON OKAMOTO
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10238-04
September 3, 2021

Mr. Matthew Van Paepeghem
Hawaii Farmers Union United
Hana Chapter
Mvpepper11@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Matthew Van Paepeghem:

Thank you for comments dated October 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *On Behalf of the Hana Chapter of the Hawaii Farmers Union United and our approximately 75 active members who are farmers and farm supporters in East Maui, at our General Membership meeting held on Wednesday, October 3, our membership agreed on the following position regarding the Alexander & Baldwin long term water lease draft EIS:*

The Hana Chapter opposes any water lease without a clear farm plan showing specific need for water usage.

Response 1: We acknowledge your comment and understand that the Hāna Chapter of the Hawai‘i Farmers Union United representing 75 members opposes the Proposed Action. However, please note that Chapter 2 of the EIS clearly articulates the water usage under the Proposed Action.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for

10238-04
Letter to Mr. Matthew Van Paepeghem
Page 2 of 2
September 3, 2021

review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Denise Bagasol <denise.bagasol@nhlchi.org>
Sent: Thursday, November 7, 2019 4:31 PM
To: Ian Hirokawa; Public Comment
Cc: Vince Raboteau; Alan Murakami; Summer Sylva
Subject: Comments on DEIS Proposed Lease for the Nahiku, Ke'anae Honomanu, and Huelo License Areas East, Central and UpCountry Maui, Hawaii
Attachments: 2019 11 07 Ltr re Comments on DEIS Proposed Lease.pdf

Gentlemen:
Attached please find Mr. Raboteau's letter dated November 7, 2019.
Mahalo,
Denise, secretary to
Vincent Raboteau



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Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813 • www.nhlchi.org
Phone (808) 521-2302 • Fax (808) 537-4268



November 7, 2019

Board of Land and Natural Resources
State of Hawai'i
Attn: Mr. Ian Hirokawa
1151 Punchbowl Street
Honolulu, Hawai'i 96813

Re: Comments on DEIS Proposed Lease for the Nahiku, Ke'anae
Honomanu, and Huelo License Areas East, Central and UpCountry Maui, Hawaii

Dear Mr. Hirokawa:

On behalf of Nā Moku Aupuni o Ko'olau Hui, Lurlyn Scott, Sanford Kekahuna, and other farmers, fishermen and women, and gatherers of native plants and stream animals in the East Maui region, the Native Hawaiian Legal Corporation submits its comments on the Draft Environmental Impact Statement ("DEIS") submitted by Alexander & Baldwin, Inc. and East Maui Irrigation Co. Ltd (collectively, "A&B") for the Proposed Lease ("Water Lease") for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas published on September 23, 2019.

The DEIS is deficient as it does not address the most pertinent concerns raised in our early consultation comments in a letter we submitted on December 29, 2016 and in our comments on the Environmental Impact Statement Preparation Notice ("EISP") dated March 10, 2017. The DEIS not only fails to meet the content requirements articulated in HAR § 11-200-17, it ignores the responsibility the Board of Land and Natural Resources ("BLNR") has pursuant to HRS chapter 343, the public trust doctrine, and Native Hawaiian rights to ensure that the EIS thoroughly and completely assesses the impacts of a project requiring its approval. HRS § 343-5(c) provides that the "authority to accept a final statement shall rest with the agency receiving the request for approval"; it is not the applicant's decision as to whether the FEIS is sufficiently detailed and complete. The fact that the agency has to make an independent decision is reinforced by decisions of the Hawai'i Supreme Court: *Ka Pa`akai O Ka`aina v. Land Use Commission*, 94 Hawai'i 31, 51, (2000) and *Kelly v. 1250 Oceanside Ptnrs*, 111 Haw. 205 (2006).

The public trust doctrine requires that the BLNR:

. . . take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process. Thus, the state may compromise public rights in the resource pursuant only to a decision made with a level of openness, diligence, and foresight commensurate with the high priority these rights command under the laws of our state. Such a duty requires DOH [and the BLNR] to not only issue permits after prescribed measures appear to be in compliance with state regulation, but also to ensure that the prescribed measures are actually being implemented after a thorough assessment of the possible adverse impacts the development would have on the State's natural resources.

Kelly v. 1250 Oceanside Ptnrs, 111 Haw. 205, 231 (2006) (internal citations and marks omitted).

The applicant likewise has important duties. It must adhere to the EIS rules. These rules provide that an “EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action.” HAR § 11-200-14. It is clear that A&B has not taken its responsibilities seriously. A&B has ignored many of the questions and concerns raised in our early consultation comments and comments on the EISPN and are attempting to defer answering these crucial questions until *after* the issuance of the 30-year lease. This proposition defies all logic considering it has been over 16 years since Judge Hifo first required that an EIS must be performed prior to the issuance of a contemplated 30-year lease to A&B. Furthermore, A&B has had over three years to adequately address the concerns raised during the EISPN phase. A&B should not be able to side-step fundamental requirements in their DEIS simply because they are of the position that a 30-year lease will not upset the status-quo of stream diversion conditions that has negatively impacted the region for over 100 years. A&B is taking the same approach in their DEIS as they are in the pending litigation concerning these issues. Namely, they argue mootness on the grounds that certain streams have been restored and therefore there is no harm since issuance of the Water Lease would not create more harm than what has historically existed. The entirety of the DEIS was crafted informed by this false proposition.

The conclusion that documented cultural and environmental impacts have already been addressed per the IIFS decision taints the overall analysis of the DEIS because this conclusion was already set prior to A&B hiring consultants and conducting all of the necessary research involved with implementing the DEIS. The presumption that adverse impacts have already been addressed through the IIFS decision no doubt limits A&B from considering ways in which cultural practices and the environment may be adversely impacted beyond the 27 streams petitioned for, which make up only a fraction of the 33,000 acre License Area which encompass hundreds of streams and tributaries and miles of coastline. Notably, since the amended IIFS for

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a portion of the 27 petitioned streams provides only “minimum streamflow levels,” it is questionable whether the IIFS adequately addresses cultural and environmental protections for those streams. To argue that there is no longer an impact because minimal standards are being met is not only flawed but dangerous when applied to the overall analysis of an allegedly objective report. Rather than thoroughly addressing potentially adverse impacts and proposing measures for “avoiding, minimizing, rectifying or reducing” those impacts as required by the EIS rules, A&B has merely provided a “self-serving recitation of benefits and a rationalization of the proposed action.” HAR § 11-200-14. In summary, the DEIS does not provide an objective and accurate analysis of the numerous potential impacts of the Proposed Action and therefore does not provide the BLNR with an adequate roadmap on how to mitigate those impacts moving forward.

The DEIS Fails to Adopt Appropriate Baseline Conditions

In 2003, Judge Hifo resolved the issue of what would constitute the appropriate baseline condition for A&B in preparing an EIS:

... the Court finds that *Confederated Tribes and Bands of the Yaltima Indian Nation v. Federal Energy Regulatory Commission*, 746 F.2d 466, 475-477 (9th Cir. 1984), which held that the relicensing of a power plant needed to be analyzed *as if it were the original licensing of the plant*, is persuasive, as appellants argued, and would require an environmental assessment (EA), and perhaps an environmental impact statement (EIS), depending upon the result of the EA, for a long-term lease which constitutes the first long-term lease of this water since at least 1985.

Hifo Order (emphasis added).

In this instance, under the DEIS, A&B sets the baseline condition at the conditions under which A&B has historically diverted the streams, contrary to an explicit court ruling, from which A&B never appealed after final judgment. As it states:

Baseline Condition – Full Diversion

The lower boundary for the HSHEP model was full diversion by the EMI Aqueduct System in its current configuration as existed under sugar cultivation, which was the prevailing conditions for nearly 100 years. (Trutta, p. 41, 2019) The Full Diversion scenario assumes that all the diversions in the EMI Aqueduct System are fully open or diverting 100% of available low flows, roughly analogous to the stream’s baseflow. The diversions in the EMI Aqueduct System were built to capture 100% of normal low flows plus some small amount of storm runoff. Hawaiian streams are “flashy”, meaning discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions. When low flow conditions persist and water needs call for all the low flow to be diverted, the streams can be dewatered below the diversions resulting in negative

impacts on species habitat and passage. Although the Full Diversion condition has not existed for more than ten years, *it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production.* (Trutta, p. 55-56, 2019) Under Full Diversion conditions, approximately 46% of the total HU remained; or conversely, Full Diversion conditions reduced the number of HU by approximately 54%.

DEIS 4-56 (emphasis added). This DEIS cannot identify the fully diverted status of the streams in the license areas as the baseline condition. Comparing the resulting environmental consequences of its proposed diversions from this perspective would make a mockery of HRS chapter 343 and its implementing rules, HAR subchapter 11-200, as well as defy a court precedent on this very issue.

Moreover, considering the harshest possible alternative of complete diversion under sugar cultivation, the amount of diversion under the Proposed Action seems like a reasonable compromise and a far better alternative. Pursuant to HAR 11-200-17(g), the DEIS must include a “description of the environment in the vicinity of the action, as it exists before commencement of the action.” In order to conform to the actual facts, this description should include post sugar plantation closure conditions that were present immediately before the commencement of the action. HC&S stopped using irrigation water in early 2016. Mahi Pono only recently began test crop cultivations that require water. Hence, there was at least a two-year gap in the supposed “continuation” of the EMI aqueduct at any level of use by this successor-in-interest to HC&S’s irrigation water use. Therefore, using the conditions that existed at the height of water diversion which no longer existed prior to the proposal of the Water Lease as the lower boundary in any assessment of the Proposed Action is a flawed approach and is in direct opposition to both legal precedent and the actual facts.

Median Flow Requirements Fail to Accurately Quantify Diversion Amounts

Throughout the DEIS it is assumed that under the Proposed Action the Water Lease would grant the right to collect up to the maximum amount of water from streams within the License Area allowed by the CWRM D&O, which is estimated to be approximately 87.95 mgd. DEIS at 2-8. This median flow required by the CWRM D&O, however, is the total estimated flow diverted from dozens of streams (and their tributaries) and measured at Honopou Stream, where the EMI Aqueduct System leaves the License Area. *Id.* The allowable diversion amount under the Water Lease, however, provides little assurance that each stream’s required median flow will be met in the absence of quantifying actual diversion amounts on a stream-by-stream basis. Without accurate calculations or estimates regarding the amount of water taken from each individual stream, there can be no accurate assessment of the potential impacts those diversions would have on the streams and the surrounding environment.

The DEIS Fails to Disclose Diversion Locations and Diversion Amounts

In our early consultation comments and comments on the EISPN we expressed that the EIS should provide at a *minimum*:

- Full disclosure of every single diversion along the East Maui Irrigation system (including photographs and descriptions as to how the diversion operates, how much water it diverts from the stream daily (on average and at minimum and maximum), and its precise location);

Pursuant to HAR § 11-200-17(e)(6), the DEIS should contain a project description that includes a summary of “technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact.” The DEIS fails to adequately disclose how much water will be diverted and when. Notably, the DEIS acknowledges on page 8-1 that the content and parameters of a watershed management plan between the lessee and the DLNR is yet to be resolved. The key components needed to finalize the Water Lease, including its terms, have still not been completed. One would think that one of the most essential terms to the Water Lease would be the amount of water proposed to be diverted and which specific areas those diversions would include. The DEIS discloses no proposed diversion amounts from individual stream sources and how those proposed amounts would impact the surrounding environment. The Water Lease should not be issued until all of the essential facts allowing for its implementation are revealed and subject to public opinion. Anything less would circumvent the very process of calling for an EIS.

While Trutta Environmental Solutions, LLC (“Trutta”) was contracted to develop a Hawaiian Stream Habitat Evaluation Procedure (“HSHEP”) model to assess impacts of surface water diversion, including instream habitat from constriction or diversion of stream flow, creation of barriers to stream animal upstream movement and entrainment of downstream drifting larvae in 33 streams, the model falls short by failing to: (1) quantify the amount of water currently being diverted; (2) identify the amount of water that will be diverted under the Proposed Action; (3) identify specific diversion locations to be used under the Proposed Action; and (4) quantify the impact any modification or action of those diversion locations would pose to native species and the significant cultural implications occurring as a result of limiting the ability to access certain diversion locations while availability of native species at and around those access points would be limited.

The DEIS fails to address key concerns surrounding the diversion of water. Indeed, one of the specifics within the 2018 IIFS that was applied to the HSHEP model was that “[t]he IIFS are the estimated 64% of median base flows (BFQ50), also known as (H90) flows, for stream restoration, and the numbers are *only estimates, to eventually be confirmed by actual flows* from

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which the H90 can be established.” (HSHEP at p. 57; *emphasis added*). Reliance on calculations not confirmed by an actual measurement of flows at each individual stream is a flawed approach and must be reevaluated after the appropriate measurements are taken.

We also insisted that the EIS disclose the following information for *each* alternative analyzed:

- The amount of water proposed to be taken from each stream daily (on average and at minimum and maximum);
- The amount of water proposed to be taken from each license area daily (on average and at minimum and maximum);
- The total amount of water proposed to be taken from the entire license areas daily (on average and at minimum and maximum).

Given that there is no disclosure on possible diversion amounts for the Proposed Action, the DEIS further fails to address these concerns over each alternative. Without knowing how much water is proposed to be diverted from each stream, each individual license area, and the entire license areas taken together as a whole, it is impossible to run accurate scenarios on the impacts those diversions would pose.

The DEIS Fails to Address Concerns Over Access to Culturally Important Areas

We have also requested in our early comments and comments on the EISPN that the EIS provide the following:

- Maps indicating all maintenance and/or access roads for the diversion system including identification of all access points at public roads and/or highways;
- Maps that show every single stream within East Maui, including all tributaries from mauka to makai, identified by name; and

HAR § 11-200-17(e)(1) provides that the DEIS should include detailed topographical and regional maps. While the DEIS does provide an array of maps, none of them address the concerns indicated in our comments above and are devoid of showing and/or identifying diversion systems as they are located next to access areas. This information is critical as it relates to the accessibility of areas significant to the traditional and customary practices of gathering, farming, fishing, etc., along streams and streambeds potentially impacted by the Proposed Action. The DEIS fails to address accessibility issues. The EIS should identify the location of access points within the License Area and whether or not those access points will be impacted stream diversion. The EIS should also disclose whether use of access roads or

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pathways associated with maintenance of the EMI system will be restricted under the Proposed Action and identify those locations accordingly.

The DEIS Fails to Adequately Consider Alternative Water Sources

We have also raised the following concerns in our previous comments:

- Alternative proposed uses including one that involves the use of water from less than all four license areas and no diversion of water from East Maui.

HAR § 11-200-17(f)(2) states the DEIS should list proposed alternative uses which could attain the objections of the action and to explain in sufficient detail why those alternatives were rejected. Despite the concern raised above in 2016, A&B has not adequately considered the possibility of seeking water sources other than diverting water from the subject license areas in order to attain the objectives of the Proposed Action.

The DEIS Fails to Satisfy *Ka Pa'akai*

The DEIS acknowledges *Ka Pa'akai* but misapplies it by improperly deferring key disclosures required by that precedent to an unknown time. Through its own *Ka Pa'akai* analysis, the DEIS admits that the inquiry does not end once the valued cultural, archaeological, and historical resources have been identified.¹ Accordingly, “the second and third prongs of the *Ka Pa'akai* analysis require the agency to determine how any of the resources may be impacted

¹ A note to HAR 11-200-12 states:

Act 50, Session Laws of Hawai'i 2000, amended the definition of “significant effect” in HRS Section 343-2 to mean “the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic [or] welfare, social welfare[.], or cultural practices of the community and State.”

Act 50 also amended the definition of “environmental impact statement” or “statement” in HRS Section 343-2 to include the disclosure of effects of a proposed action on cultural practices, as follows:

“environmental impact statement” or “statement” means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic [and] welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

(emphasis in original).

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by the proposed action, and what, if any, feasible measures can be taken to protect the resources.” CIA at 393.

Rather than addressing the second and third prongs of the analysis, there is a generic assumption that application of the IIFS decision has the “potential to reduce or eliminate” the proposed cultural impact and therefore no further recommendation is needed as to the implementation of feasible protective measures. Most importantly, the recommendations given push a more detailed assessment to be provided in the future by a “qualified professional.” Providing a detailed assessment *in the future* rather than submitting a detailed assessment with the DEIS fails to satisfy *Ka Pa’akai* because plans to reasonably protect cultural resources are clearly erroneous if they are only conceptual in form. It also conflicts with the very definition of an EIS,² by depriving the BLNR of the environmental impact studies and alternatives analysis necessary for its informed decision-making.

Relying exclusively on a sister agency like the CWRM and post-dating a more detailed assessment addressing listed and recognized cultural impacts is the very definition of conceptual and goes against the entire purpose of submitting an EIS in the first place. It also contravenes a prior court order in related litigation that explicitly prohibits BLNR from “merely rubber-stamping every CWRM determination.” *Na Moku Aupuni O Ko’olau Hui and Maui Tomorrow v. BLNR*, Civ. No. 03-1-0289-02 (1CC Order filed Oct. 10, 2003 (hereafter, “Hifo Order”).

While there is an extensive list of Traditional Cultural Practices (hereafter, “TCP”) impacted by the Proposed Action and what streams are associated with those practices, the DEIS and the Cultural Impact Assessment (“CIA,” attached as Appendix F) fail to provide any meaningful assessment since there is a lack of disclosure as to the amount of water to be taken from each stream. *See* CIA at 352-72, Tables 13 and 14.

² HAR 11-200-14 provides:

... the EIS process involves more than the preparation of a document; it involves the entire process of research, discussion, preparation of a statement, and review. The EIS process shall involve at a minimum: identifying environmental concerns, obtaining various relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts. An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies shall ensure that statements are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action.

(emphasis added).

For example, the discussion on (a) the role of fresh water providing for the ecosystem vital to perpetuating the life of marine foods important to residents and (b) the historic use of kākā and kūkaula fishing methods suggests a recognition of the community's reliance on continued fishing and other marine life gathering. CIA at 391-92. The DEIS provides a table of these gathering practices. CIA at 352-71, Table 13. However, without a richer and more detailed revelation of a scientific *assessment of impacts* from past, current and future diversions from the streams identified, BLNR cannot evaluate the quantitative consequences on any affected TCP along stream segments, or in stream mouth ecosystems within the watershed. Environmental disclosures for each of these specific micro-environments is crucial to a complete analysis of TCP impacts and reasonable protective measures specific to those practice locations.

The CIA acknowledges the community residents who rely on both stream life (o'opu, 'ōpae, and hihīwai) and marine life food sources, all of which rely on the steady flow of fresh water in streams flowing from the mountains to the ocean. CIA at 352-54, 359, 388-89, 392. It acknowledges witnesses who attest to declines in stream life, marine life, and the health of various fish species and populations. *Id.* In general, historic stream gathering of 'ōpae from mauka to Makai, now apparently restricted to the upper reaches of streams due to the availability of cooler water now only in "mountain areas" where stream flows still remain abundant. CIA at 392 (citing to expert Skippy Hau). However, once again, the DEIS is devoid of watershed specific analysis of the impacts of specific diversions in each stream, depriving the reader of any appreciation for the impacts these specific diversions are having on any particular stream watershed. Without location information on diversions, or a scientific assessment on each affected watershed, the BLNR as a regulator would not be able to fashion reasonable protective measures specific to those affected stream stretches affected by specific diversions.

EMI diverts multiple streams, up to four times in some instances, affecting the stream course at varying elevations differently. These multiple diversions along a single stream reflects the gaining and losing nature of that stream segment, which may affect the nature of the protective measures and underscore why a one-size-fits-all approach is inappropriate.

Similarly, the CIA discussion of kupuna who once caught and ate 'ōhua and hinana living in certain tributaries suggests that those locations might be targeted for similar protective measures. CIA at 392. However, without more location-specific data or impact assessments, BLNR would not be able to address possible protective measures that would have to rely on which tributaries are targeted for possible diversions that affect those species.

Again, one of the documented community concerns listed in the CIA was seeking clarification on stream flow, water diversion, and climate statistics as is expressed in the following questions: (1) How much water is being diverted at each location of intakes, ditches, dams, pipes, and flumes?; (2) How much water is being diverted from East Maui to Central

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Maui?; and (3) Is climate change accounted for? CIA at 393-94. The recommendation provided is as follows: “It is recommended that these questions be addressed by qualified professionals who possess an understanding of stream flow mechanics, water diversion, and climate statistics within the License Area.” While the more detailed assessment may presumably be found in Appendix A of the DEIS, none of these crucial questions are answered. Notably, these same concerns were brought to the attention of A&B prior to them conducting the aforementioned reports in our EISPN comments back in 2016.

Hence, the DEIS provides none of the disclosures required by the law and denies the BLNR and the public of critical information related to the “unavoidable impacts” of A&B’s proposed use.

Given the above, BLNR is afforded no mechanisms for the reasonable protection of gathering practices that are specific to the habitat locations in the streams affected by diversions.

Streams Not Subject to the 2018 CWRM Decision

The DEIS identifies 13 streams³ not subject to a CWRM IIFS and have never been assessed for how stream diversions from them may have affected their habitats. (See, DEIS at 1-16 to 1-19, Table 1-3). A&B must perform, at a minimum, a *Ka Pa’akai* analysis for each of them and report the results in the EIS, prior to causing any diversions from them. It must also conform to the EIS requirements outlined above, including the “unavoidable impacts” of the use of non-renewable resources, like water, and irreversible curtailment of the uses of the environment, like stream diversions.

These disclosures must be related to each specific stream watershed and brackish water ecosystem that is impacted by the various levels of diversions. A reasonably objective impact assessment would address impacts of each specific diversion on the stream habitat of each particular stream affected by those diversions. There are sound biological reasons for determining how depleting flow in one stream may impact an adjacent stream or other streams within the same region. In other words, the impact assessment should account for cross-stream effects on habitats as well.

Impacts on Flora

As expressed in our comments to the EISPN, we raised a concern that the EIS should not only consider impacts on flora found in the four license areas, but in areas that lie beyond and downstream that are impacted by the Proposed Action’s reduction in streamflows. We further

³ Puakea, Kōlea, Punalu’u, Ka’aiea, ‘O’opuola (Makainaali Tributary), Puehu, Nā’ili’ilihaele, Kailua, Hanahana (Ohanui Tributary, aka Hanawana and Hanauna), Hoalua, Waipi’o, Mokuapapa, Ho’olawa (Ho’olawaili and Ho’olawa nui Tributaries), DEIS 1-16 to 1-19, Table 1-3.

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stated that the EIS should address the impact of reduced streamflows on the type and amount of vegetation that grows in the streambed, effects on native species, and the proliferation of alien species in and along the streambeds. Not only did the DEIS fail to address vegetation within the streambed, the survey was only conducted within the License Area. The general conclusion in the DEIS is that the Proposed Action would have no impact on terrestrial flora of fauna resources because the action does not require vegetation removal and it involves “the use of roads and a system that has been in place for over 90 years.”

The DEIS clearly did not address the potential adverse impacts reduced streamflows would have on vegetation growing in and around streambeds. Accordingly, a more thorough analysis of this impact should be provided.

Lo’i Kalo

In order to address the actual and potential impacts of diversion on kalo growing, the DEIS recommends that a “botanist, ethnobotanist, or similar qualified professional provide an assessment of the ideal conditions of water flow and water temperature needed for kalo growth in comparison to the current water flow and water temperature of impacted areas in order to understand and address the stated impact.” DEIS at 4-128; *see also*, App. F. CIA at 394-95. Again, it is assumed that the IIFS decision “has the potential to reduce or eliminate this cultural impact,” as eight of the streams identified by community participants have been fully restored in accordance with the IIFS. *Id.* While these assumptions as they relate to certain impact areas are devoid of any meaningful review, there may very well be other areas where kalo or crop growing activity is impacted by diversions. As such, there should be an appropriate assessment for areas where prior dewatering of streams, like Honomanū, which may potentially attract a restoration of traditional taro growing areas abandoned due to the lack of a steady source of irrigation water. Similarly, the historic pattern of lo’i kalo growing area much larger than what currently exists. CIA at 391.

Collectively in this EIS draft, the reader cannot know what the significance of impacts there may be from diversions from individual streams without the specifically located stream diversion meters in place that would generate that information. Without that information the DEIS denies the BLNR and those who are affected at any particular stream specific habitat location that has suffered reduced stream flows that could be affecting stream species and marine food species that rely on the brackish water ecosystem interface where streams discharge into the ocean, both of which are of cultural importance to gatherers. This result is unacceptable and renders this cultural impact assessment fatally defective.

Proposed Action is Vague

The Proposed Action specifies no amount representing a volume of water being sought, other than the supposed surface water amount that would exceed the CWRM IIFS, i.e., 87.95 mgd, the only figure mentioned for possible use in the DEIS. Nevertheless, throughout the DEIS, there is no objective basis to justify an amount based on any demonstrated level of actual need. In fact, the specifications of alternatives prescribe no alternative levels of water diversion, accept a generally worded “Water Lease Volume Alternative” that is imprecise as to actual amounts of water being sought. Since there is no discussion throughout the entire DEIS regarding the amount of water being sought, there is no elaboration as to the need for the volume of water to be diverted under the Water Lease. Instead of offering different alternatives for water needed to irrigate the crops it has been planning to cultivate since January 2016, the DEIS leaves nothing for the BLNR to consider as projected impacts for the desired level of water A&B is seeking, defeating the very purpose of an EIS.

In other words, A&B seeks a lease to 33,000 acres of ceded lands, formerly Crown Lands, for the authority to take whatever amounts of water it decides, subject only to the 2018 CWRM IIFS and what water reservation is established for the DHHL, so long as the water is used for: (1) Irrigation water to support agribusiness operations on 30,000 acres of agricultural land in Central Maui; and (2) the domestic water needs of the MDWS.

Without specifications for water amounts sought beyond the MDWS domestic water needs, the DEIS is a vacuous exercise, as it reveals nothing about the potential impacts that would be generated at *any* level of diversion. A&B, simply put, wants a blank check to be able to disclose impacts from water diversions of unspecified amounts, which it describes in the vaguest of terms. This approach defies a core requirement for EIS content. HRS §343-2 (defining in part “Environmental Impact Statement” as “an informational document ... which discloses the environmental effects of a proposed action, ... and **alternatives to the action** and their environmental effects”) (emphasis added). .

A&B should have used Mahi Pono’s projected water demands for its crop irrigation, reported in detail to the BLNR just last month, in order to accurately incorporate various levels of water diversions from streams. At a minimum, based on Mahi Pono’s public representations, this DEIS should analyze impacts of diverting the levels of water it identified (45-55 mgd) and present those anticipated impacts in a cogent analysis to the BLNR and the general public through a revised and updated DEIS. A&B could have easily done such an impact analysis by assuming different levels of water demand related to projected levels of cultivation on the 30,000 acres it is now identifying as future diversified agricultural areas in Central Maui.

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Incidentally, Mahi Pono demonstrated that it has actual calculations for projected water demand. In the October 2019 meeting of the BLNR, Mahi Pono revealed that it is seeking 45-55 mgd for its current agricultural plan. However, there is no hint of any such projected demand in the DEIS, nor any justification for any projected water demand and the impacts those levels of water diversion would generate. Specifically, how much water would be diverted at each individual stream in order to accommodate the demand amount. A meaningful impact assessment cannot be entertained without meeting these two simple criteria: (1) a fair acknowledgment and calculation as to the amount of water demanded; and (2) how that volume of water is proposed to be diverted from stream sources.

After considering the HSHEP model results that the Proposed Action would have a negative impact by reducing native stream animal habitat from “Natural Flow” conditions in its discussion of the 2018 CWRM D&O setting the IIFS, A&B asserts how the CWRM should make decisions about instream flows in their analysis. “[T]he CWRM must weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses. It is also its duty to establish IIFS that protect instream values to the extent practicable and to protect the public interest.” (DEIS at 4-57). Given these considerations, the CWRM was cited in their decision as stating that it is both “reasonable and beneficial to use a portion of East Maui stream water for the development of diversified agriculture on Maui’s central plains.” (DEIS at 4-58, citing CWRM D&O at vi).

While the above considerations may be applicable for the CWRM in setting the IIFS, this analysis is devoid of the specificity required for a meaningful EIS. The present or potential instream values can only accurately be determined when there are actual values, i.e., the amount of water being demanded, is attributed to that value. Importantly, even though the CWRM has agreed that a portion of East Maui stream water should be used for the development of diversified agriculture, it is up to the EIS to determine what that “portion” should be and to justify that value accordingly. The DEIS has failed to do so and is misleading by broadly quoting the CWRM in order to justify diverting an undisclosed amount of stream water *after* the issuance of the subject Water Lease.

Response to Comments

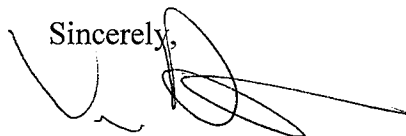
As the Hawai’i Supreme Court has observed, the “applicant must respond in writing and address all concerns and questions before proceeding with the development of the EIS. Once this phase of the process is complete, the applicant then begins preparation of the EIS.” *Sierra Club v. Office of Planning*, 109 Haw. 411, 415 (2006) (emphasis added). *See also*, HAR §§ 11-200-15(D), -22(C) and -23.

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A&B has ignored or discounted many of the questions asked in our previous letters and comments. To the extent any of our questions or concerns remains unanswered, we request the EIS not be accepted until those concerns are answered and adequately addressed.

We look forward to the continued participation in the consultation process required to prepare the EIS. Should you have any questions or concerns regarding the above, please do not hesitate to contact our office at (808) 521-2302.

Sincerely,

A handwritten signature in black ink, appearing to read 'Vincent Raboteau', with a long horizontal stroke extending to the right.

Vincent Raboteau

cc: Applicant: Alexander & Baldwin, Inc.
c/o Wilson Okamoto Corporation
waterleaseeis@wilsonokamoto.com

Consultant: Mr. Earl Matsukawa
Wilson Okamoto Corporation
waterleaseeis@wilsonokamoto.com



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September 3, 2021

Mr. Vincent Raboteau
Native Hawaiian Legal Corporation
1164 Bishop Street, Suite 1205
Honolulu, HI 96813
Vince.raboteau@nhlchi.org

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Vincent Raboteau:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *On behalf of Na Moku Aupuni o Ko‘olau Hui, Lurlyn Scott, Sanford Kekahuna, and other farmers, fishermen and women, and gatherers of native plants and stream animals in the East Maui region, the Native Hawaiian Legal Corporation submits its comments on the Draft Environmental Impact Statement ("DEIS") submitted by Alexander & Baldwin, Inc. and East Maui Irrigation Co. Ltd (collectively, "A&B") for the Proposed Lease ("Water Lease") for the Nahiku, Ke'anae, Honomanii, and Huelo License Areas published on September 23, 2019.*

Response 1: We appreciate the Native Hawaiian Legal Corporation’s (NHLC) participation in this EIS process. We acknowledge your comment and it is our understanding that the NHLC is submitting comments on the subject Draft EIS on behalf of Nā Moku Aupuni o Ko‘olau Hui, Lurlyn Scott, Sanford Kekahuna, and other farmers, fishermen, and women, and gatherers of native plants and stream animals in the East Maui region.

Comment 2: *The DEIS is deficient as it does not address the most pertinent concerns raised in our early consultation comments in a letter we submitted on December 29, 2016 and in our*

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comments on the Environmental Impact Statement Preparation Notice ("EISPN") dated March 10, 2017.

Response 2: Your comment lacks specificity about NHLC's most pertinent concerns. The Draft EIS was prepared after taking into consideration all of the information that was obtained in connection with the pre-assessment consultation, the comments submitted in response to the EIS Preparation Notice (EISPN), which was published on February 8, 2017, the two voluntary public scoping meetings that we, Wilson Okamoto Corporation (WOC), held during the EISPN public comment period, and in compliance with the EIS context requirements under HAR Title 11, Chapter 200, including without limitation the requirements under HAR § 11-200-17. Specifically, pre-assessment consultation was started in November 2016 with the mailing of letters to numerous parties, including NHLC, seeking comments on the EIS. WOC held two voluntary public EIS scoping meetings (one in Kahului on February 22, 2017, and one at the Ha'ikū Park and Community Center in Pā'ia on February 23, 2017) during the EISPN public comment period. See Appendix K and L for transcripts of the scoping meetings, and Appendix J and M for early consultation letters, and letters commenting on the EISPN. NHLC's comments provided during early consultation, dated December 26, 2016, and NHLC's comments dated March 10, 2017 in response to the EISPN, were addressed and responded to as shown in Appendix J and Appendix M of the Draft EIS. As noted in those letters, NHLC's comments and concerns were considered in the preparation of the Draft EIS with regard to meeting the content requirements under HAR Title 11, Chapter 200.

Comment 3: *The DEIS not only fails to meet the content requirements articulated in HAR § 11-200-17, it ignores the responsibility the Board of Land and Natural Resources ("BLNR") has pursuant to HRS chapter 343, the public trust doctrine, and Native Hawaiian rights to ensure that the EIS thoroughly and completely assesses the impacts of a project requiring its approval. HRS § 343-5(c) provides that the "authority to accept a final statement shall rest with the agency receiving the request for approval"; it is not the applicant's decision as to whether the FEIS is sufficiently detailed and complete. The fact that the agency has to make an independent decision is reinforced by decisions of the Hawai'i Supreme Court: *Ka Pa'akai o Ka'aina v. Land Use Commission*, 94 Hawai'i 31, 51, (2000) and *Kelly v. 1250 Oceanside Ptnrs*, 111 Haw. 205 (2006).*

Response 3: The Draft EIS included a "Content Checklist" identifying each element under HAR § 11-200-17 and where within the text of the Draft EIS information on each particular element could be found. Please note that the Content Checklist has been updated based on updated discussions and additions added to the Final EIS as shown subsequently after the front cover.

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Your comment does not explain how the Draft EIS "ignores" the Board of Land and Natural Resources' (BLNR) responsibilities. The BLNR is identified as the accepting authority for this EIS and it will determine if the EIS is acceptable pursuant to the standards under Hawai'i Revised Statutes (HRS) Chapter 343 and HAR Title 11, Chapter 200. We acknowledge that it is not up to the Applicant to make the final determination on whether the EIS is sufficient and acceptable. That role belongs to the applicable accepting authority, as discussed in EIS Section 1.4:

For the purposes of HRS Chapter 343, the applicant for the Water Lease is A&B, pursuant to orders of the BLNR in April and June of 2016, directing A&B to prepare an EIS. In accordance with HAR of the State of Hawai'i Department of Health (DOH), Section 11-200-4(b), the BLNR, as the executive board of the DLNR, is the accepting authority for the proposed EIS because the DLNR is the agency initially receiving and agreeing to process the request for the issuance of a Water Lease at public auction.

Your comment about the BLNR having public trust responsibilities is acknowledged, and that issue is addressed in Response #4 below. Moreover, a discussion regarding the Public Trust Doctrine has been added as Section 1.5 to the Final EIS as shown on pages 1-25 to 1-27.

Comment 4: *The public trust doctrine requires that the BLNR: . . . Take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process. Thus, the state may compromise public rights in the resource pursuant only to a decision made with a level of openness, diligence, and foresight commensurate with the high priority these rights command under the laws of our state. Such a duty requires DOH [and the BLNR] to not only issue permits after prescribed measures appear to be in compliance with state regulation, but also to ensure that the prescribed measures are actually being implemented after a thorough assessment of the possible adverse impacts the development would have on the State's natural resources. Kelly v. 1250 Oceanside Ptnrs, 111 Haw. 205, 231(2006) (internal citations and marks omitted).*

Response 4: We acknowledge that the Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of BLNR and its sister agency, Commission on Water Resources Management (CWRM), as Public Trustees with regard to the amount of water that the Public Trust Doctrine requires to be left undiverted from the streams in the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to BLNR for the issuance of the Water Lease. As such, we expect BLNR, in its decision-making regarding the requested issuance of the Water Lease, to follow the

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judicial guidance that has already been given regarding what is necessary for BLNR to comply with the requirements of the Public Trust Doctrine.

Please note, moreover, that finalization of this EIS does not result in issuance of the Water Lease. Any decision on the Water Lease auction and issuance of the Water Lease would happen only after completion of this EIS, and through a separate process before the BLNR. Accordingly, the present situation is unlike the situation in the *Kelly v. 1250 Oceanside Ptnrs* case cited in your comment above. That case did not deal with a disposition of a Public Trust resource or with the preparation of an EIS. It dealt with alleged failures by the County of Hawai'i Planning Department and the State Department of Health to be proactive before issuing a regulatory permit potentially affecting runoff into protected coastal waters. It was alleged that permits were issued without an adequate evaluation of this potential and, subsequently, excessive runoff occurred during a series of heavy rainstorms. While the Public Trust duty to be proactive was confirmed by the Supreme Court of Hawai'i, upon reviewing the record of the trial held in that case, the Supreme Court of Hawai'i found that no breach of the public trust had actually been proven by the plaintiffs.

In this case, on the other hand, no action on the proposed Water Lease has yet been taken. To the contrary, the Draft EIS and the Final EIS are, in fact, part of the very process that BLNR is proactively requiring of the Applicant in order to fulfill BLNR's Public Trust obligations.

Comment 5: *The applicant likewise has important duties. It must adhere to the EIS rules. These rules provide that an "EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action." HAR § 11-200-14. It is clear that A&B has not taken its responsibilities seriously.*

Response 5: We acknowledge your comments above and agree that the Applicant has important duties and must adhere to the EIS rules prescribed under HRS, Chapter 343 and HAR, Title 11, Chapter 200. As noted in Response #3 above, the Draft EIS fully complies with all relevant requirements, including the content requirements set forth in HAR §§ 11-200-16 and 11-200-17, and includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement.

Regarding your comment that these rules provide that an “*EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action.*”, please note that as preparers of the EIS we take an impartial position with regards to the Proposed Action. It is our position that the EIS is not a self-serving recitation of benefits and rationalization of the Proposed Action.

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The Draft EIS is extremely detailed and provides a large amount of relevant information in an effort to meet that commitment to transparency.

HRS § 343-2 defines "environmental impact statement" as "an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects." The Draft EIS discloses the environmental effects of the proposed Water Lease, and the impacts of the proposed Water Lease on the economic welfare, social welfare, and cultural practices of the community and State, as well as the effects of the economic activities arising out of the proposed Water Lease, and presents measures to minimize adverse effects, and also presents alternatives to the Water Lease and the environmental effects of those alternatives.

It is not clear what you mean that "A&B has not taken its responsibilities seriously" or what specific questions and concerns you believe have been ignored. A&B, through its environmental consultants WOC, has engaged in a comprehensive EIS process that started with pre-assessment consultation in the fall of 2016, as described in Response # 2. We respectfully disagree with your comment that A&B has not taken its responsibilities seriously.

Comment 6: *A&B has ignored many of the questions and concerns raised in our early consultation comments and comments on the EISPN and are attempting to defer answering these crucial questions until after the issuance of the 30-year lease. This proposition defies all logic considering it has been over 16 years since Judge Hifo first required that an EIS must be performed prior to the issuance of a contemplated 30-year lease to A&B.*

Response 6: With respect to responses to comments received on the EISPN, the requirements for responding to such comments are set forth under HAR § 11-200-15(d) and differ from the requirements to respond to a comment on a Draft EIS, and those requirements have been satisfied. See Appendix M.

Your comment that A&B is attempting to defer answering your questions until after the issuance of the proposed Water Lease is unclear due to a lack of specificity in your comment. Your comment does not explain or identify examples of how the Applicant is, as you allege, attempting to defer answering questions (which questions you do not specify), until after issuance of the proposed Water Lease. The EIS provides a robust analysis of environmental impacts. Chapter 4 of the Draft EIS provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields, including a description of the existing environment.

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The analysis in Chapter 4 considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts.

The Draft EIS also included and relied upon nine technical studies, provided as Appendix A through I, as follows: Appendix A, Assessment of The Environmental Impacts of Stream Diversions on 33 East Maui Streams Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model; Appendix B, East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry; Appendix C, Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease; Appendix D, Historical Structure Assessment (HAS) East Maui Aqueduct System; Appendix E, Archaeological Literature Review and Field Inspection (LRFI) for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas; Appendix F, Cultural Impact Assessment (CIA) for the Nāhiku, Ke‘anae, Honomanū and Huelo License Areas; Appendix G, A&B Proposed Water Lease for the Nāhiku, Ke‘anae, Huelo, and Honomanū Social Impact Assessment (SIA); Appendix H, Economic and Fiscal Impact Study Proposed Water Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Area; and Appendix I, East Maui Water Lease: Agricultural and Related Economic Impacts.

You did not identify what specific questions A&B seeks to answer only after the Water Lease is issued. Consistent with the requirements under HAR § 11-200-17(b)(5) and (n), the EIS does identify unresolved issues, and addresses how those issues will be resolved for the Water Lease is issued. See Chapter 8. The unresolved issues will be resolved before issuance of the Water Lease. Those issues being the rental payment that will be charged for the Water Lease, the ultimate amount of the DHHL reservation, and the contents of the watershed management plan. The Water Lease rental payments will remain unresolved until after an appraisal is done, and prior to the issuance of the Water Lease. Our expectation is that the DLNR, on behalf of the BLNR, will commission, or approve the commissioning of, the appraisal.

Although the DHHL reservation amount was anticipated in the Draft EIS (see e.g. Section 2.1.1) that discussion has been updated in the EIS to reflect more current information as to the status of

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the expected reservation - the amount of the expected reservation at this point remains as stated in the Draft EIS - 11,455,510 gallons per day. See updated Section 2.1.1 of the Final EIS on pages 2-4 to 2-7.

The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See on pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Finally, your comment that, "it has been 16 years since Judge Hifo first required that an EIS must be performed prior to the issuance of a contemplated long term lease," needs to be placed into the context of subsequent events. Your reference to Judge Hifo's ruling is presumed to be the November 3, 2003 First Amended Final Judgment in Civil No. 03-1-0289-02 in the First Circuit Court of Hawai'i. Less than four years later, following subsequent proceedings, it was noted on page 2 of BLNR's March 23, 2007 Findings of Fact, Conclusions of Law and Decision and Order in the contested case hearing requested by your clients in connection with the Water Lease that, "[a]ll parties now concede that an EA (and potentially an environmental impact statement ("EIS")) must be prepared, amended IIFS must be determined and that this process is likely to take years." Further, it was not until May 8, 2015 at a BLNR hearing in the same proceeding that your clients agreed to withdraw their objection to the Applicant doing the EIS. Work on the Draft EIS was thereafter timely commenced in accordance with BLNR's April 14, 2016 and July 8, 2016 orders.

Comment 7: *Furthermore, A&B has had over three years to adequately address the concerns raised during the EISPN phase. A&B should not be able to side-step fundamental requirements in their DEIS simply because they are of the position that a 30-year lease will not upset the status-quo of stream diversion conditions that has negatively impacted the region for over 100 years.*

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Response 7: Regarding your comment about A&B having over three years to address the concerns raised during the EISPN phase, as discussed in Response #2 above, the comments that were provided were addressed and responded to as shown in Appendix M of the Draft EIS, which was published on September 23, 2019. However, please note that the BLNR issued an order on April 14, 2016, directing A&B to scope the EIS, including the identification of the portions of the EIS that could proceed prior to the CWRM issuing a final decision on the petitions for interim instream flow standards (IIFS), and those portions which could not. That scope was filed with the BLNR in June 2016. On July 8, 2016, the BLNR approved the scope and instructed that “A&B and EMI should proceed with the preparation of an environmental impact statement (EIS) in as expeditious manner as possible.” Section 1.4 of the Draft EIS recites this history.

Your comment that A&B should not be able to side-step fundamental requirements in the Draft EIS lacks specificity. However, as discussed in Response #3 above, the Draft EIS fully complies with all relevant requirements, including the content requirements set forth in HAR § 11-200-16 and 11-200-17, and includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement.

Regarding your comment that A&B has taken the position that a 30-year lease will not upset the status-quo of stream diversion conditions that has negatively impacted the region for over 100 years, it is recognized that that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions." HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision-making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

However, the streams in East Maui have been diverted for over a century and it is not scientifically feasible to fully document impacts that first took place more than a century ago as pre-diversion data does not exist. Although it is not scientifically feasible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui. Archaeological Literature Review and Field Inspection for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and

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Huelo License Areas report (Appendix E), which has been further supplemented to include information on the legendary Pōhaku in Wahinepe‘e, archeological resources in Central Maui, climate change impacts on cultural and historical resources, and historical agriculture in East Maui, which provides context about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families as analyzed in the other technical studies.

As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS.

The Assessment of The Environmental Impacts of Stream Diversions on 33 East Maui Streams Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System. The Assessment of The Environmental Impacts of Stream Diversions on 33 East Maui Streams Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) has been updated to include targeted discussions on diversion impacts under the different flow scenarios to native stream habitat units based on comments received to the Draft EIS. As it relates to the human environment, the Cultural Impact Assessment for the Nāhiku, Ke‘anae, Honomanū and Huelo License Areas (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The A&B Proposed Water Lease for the Nāhiku, Ke‘anae, Huelo, and Honomanū Social Impact Assessment (Appendix G) documents community outreach with various stakeholders in a context for understanding the current and historical perceptions of diverting East Maui stream water, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts.

Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

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Comment 8: *A&B is taking the same approach in their DEIS as they are in the pending litigation concerning these issues. Namely, they argue mootness on the grounds that certain streams have been restored and therefore there is no harm since issuance of the Water Lease would not create more harm than what has historically existed. The entirety of the DEIS was crafted informed by this false proposition.*

Response 8: Your comment that the Applicant is arguing mootness is acknowledged, but it is not clear where or how within the Draft EIS you think this position is stated. Moreover, the EIS does not present the position that the stream restoration required under the CWRM's Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O) eliminates all impacts. Your comment is directed to an assessment of stream impacts. Section 4.2.1 of the EIS, with respect to East Maui, presents a natural flow baseline condition based upon the HSHEP model provided in Appendix A. Under that condition, which has not existed in over 100 years, it is estimated that there is a potential for up to 1,747,390 habitat units (HU) within the streams within the License Area. Please note that HU are defined as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat. HU have measures of stream size and watershed wetness incorporated into the value which reflect comparative stream width and as a result only linear measures of habitat area are presented. It should be noted that all linear measures are in meters. The assumption underlying the natural flow baseline condition is if no modifications or diversions existed, then this would be the maximum available habitat for native stream species. The number of HU estimated after application of the IIFS requirements under the CWRM D&O, and if the Water Lease is issued for the amount assumed in this EIS, is 1,116,581 HU.

The HSHEP model also provides an assessment of the potential HU that would be available if no Water Lease (i.e., the No Action alternative) was issued and the EMI Aqueduct System was only able to divert 30% of water available at the Honopou Stream boundary after compliance with the IIFS requirements under the CWRM D&O. This is described as the "no action alternative" or "30% remaining flow diversion" scenario. There, the number of HU within all License Area streams would be 1,394,508.

The Proposed Action is a continued impact to the environment. However, when compared to diversions that occurred during sugarcane operations over the last century and more, the Proposed Action will have a lesser impact and several environmental factors are not expected to experience greater impacts as discussed in Chapter 4. Specifically, Section 4.2.1 of the EIS, which summarizes the study included in Appendix A conducted by Trutta Environmental Solutions (Trutta), discusses the application of the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model and stream restoration scenarios. The application of the HSHEP model uses the two boundaries for assessment: the "Full Diversion Condition" (the lower

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boundary) and the “Natural Flow Condition” (the upper boundary). The combination of the lower and upper bounds provide the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as, by definition, the changes must fall somewhere between 100% diversion and 0% diversion. The two scenarios presented, the Proposed Action compliant with the CWRM D&O (Trutta’s 2018 IIFS) and No Action Alternative (30% remaining flow diversion), are examples of how different flow restoration scenarios result in different amounts of habitat units. The HSHEP model is used to quantify these differences based on flow restoration changes at diversions. The HSHEP follows a logical approach and systematically addresses on-the-ground conditions.

We acknowledge, pursuant to HAR § 11-200-17(m), an EIS must consider "mitigation measures proposed to avoid, minimize, rectify, or reduce impact[.]" Regarding stream habitats, Section 4.2.1 of the Final EIS has been updated to include a discussion of general mitigation measures as shown on pages 4-61 to 4-67.

Comment 9: *The conclusion that documented cultural and environmental impacts have already been addressed per the IIFS decision taints the overall analysis of the DEIS because this conclusion was already set prior to A&B hiring consultants and conducting all of the necessary research involved with implementing the DEIS.*

Response 9: For clarification, the EIS does not merely rely on the CWRM D&O and conclude that the cultural and environmental impacts of the Proposed Action and alternatives are addressed thereunder. Further, you have not identified the basis of your conclusion that the EIS analysis determined that all cultural and environmental impacts have been addressed by the IIFS requirements under the CWRM D&O. No such conclusion is made in the EIS. As evidence, the EIS technical studies include recommended mitigation measures, and do not solely rely on the IIFS set forth under the CWRM D&O.

Moreover, your description of the timeline of events is not correct. Work on the EIS started in 2016, well before the June 20, 2018 issuance of the CWRM D&O. BLNR, by order dated April 14, 2016, directed A&B to commence the EIS process and to provide a scope of work for the preparation of an environmental review document pursuant to Chapter 343, HRS. The BLNR instructed that the scope of work should distinguish between those matters that can be undertaken prior to the CWRM decision on the petitions to amend the IIFS, and those matters that require the final CWRM IIFS decision. On June 9, 2016, A&B submitted to the BLNR a Scope of Services for Preparation of a Chapter 343, HRS Environmental Impact Statement for Proposed Lease for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas. BLNR, by order dated July 8, 2016, directed A&B to proceed with the preparation of an EIS.

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Pre-assessment consultation was started in November 2016 with the mailing of letters to numerous parties, including NHLC, seeking comments on the EIS. WOC held two voluntary public EIS scoping meetings (one in Kahului on Feb. 22, 2017, and one at the Haiku Park and Community Center in Paia on Feb. 23, 2017) during the public comment period on the EIS Preparation Notice, which was published on February 8, 2017. Transcripts of those public scoping meetings are provided in Appendix K and L.

After these scoping and pre-assessment activities, WOC was able to retain technical consultants to contribute to the assessment of environmental impacts of the Proposed Action. We do not understand why you concluded that technical consultants were retained only after the issuance of the CWRM D&O; in any event, that conclusion is wrong. Moreover, it has been recognized from the start that the EIS would have to take into account whatever decisions CWRM made on the then-pending IIFS petitions, as those conditions necessarily establish the maximum amount of water that could be diverted from petitioned-streams. Moreover, in the same Judge Hifo Order that you cited in Comment # 12, Judge Hifo instructed, with respect to then then-pending IIFS petitions, that "[i]f the BLNR believes it does not have the requisite expertise to investigate, then it should wait until the CWRM has acted or make its own application to establish instream flows reflecting the diversions it proposes to make, before authorizing the diversion." Hifo Order at 5.

The EIS acknowledges that the CWRM D&O, the product of a contested case hearing that was requested in 2010, on an initial IIFS petition that was filed in 2001 and had been the subject of two CWRM decisions (in 2008 and 2010), does provide numerous beneficial environmental and cultural impacts with its flow restoration, and it sets the baseline for the maximum amount of water that could be diverted from the petitioned streams within the License Area. It has been understood for several years that the Draft EIS could not be completed until after issuance of the CWRM D&O as discussed in Response #7 above. As explained in Section 1.4 of the Draft EIS (and in Response #6), in 2001 A&B offered to perform the required HRS, Chapter 343 environmental review, but NHLC, on behalf of Nā Moku objected to A&B undertaking the environmental review process. NHLC did not withdraw its objection regarding the preparation of the HRS, Chapter 343 environmental documents until oral arguments before the BLNR in May 2015, which withdrawal was then documented in the April 14, 2016 order issued by the BLNR, directing A&B to commence the environmental review process and provide a scope of work for the preparation of an environmental review document pursuant to HRS Chapter 343.

The requirements under the CWRM D&O are crucial to the environmental analysis because, as explained in Section 1.3.4 of the Draft EIS:

The June 20, 2018 CWRM D&O establishes a quantity of water that must remain in each stream at specified locations subject to the IIFS Petitions. The CWRM

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D&O does not specifically authorize or allocate amounts of water for offstream uses. The CWRM evaluated each of the streams under the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration potential for fish and other stream animals, recreational opportunities, and scenic values. Then the streams were looked at in an integrative approach with consideration for the overall ecological ramifications of the decision. The CWRM also considered the economic ramifications of its decision on offstream uses, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture.

And at Section 2.1:

Independent of the Proposed Action, on June 20, 2018, the CWRM issued its D&O setting IIFS for numerous streams and tributaries of streams in the License Area, which includes water originating and flowing from both State and privately owned lands within East Maui. The CWRM D&O establishes a quantity of water that must remain in each stream at specified locations. The CWRM D&O ordered full stream restoration for 10 streams and partial flow restoration on 12 additional streams (Please refer to Section 1.3.4). Therefore, the maximum amount of water that can be awarded through the Water Lease is what is available for diversion after the CWRM D&O is implemented. This is the premise of the Proposed Action.

Hence, the CWRM D&O was fundamental for assessing the Proposed Action because it sets forth the maximum amount of water that could be diverted and therefore the maximum potential for environmental impact, but in no way was it the sole basis for assessment in the EIS.

The nine technical studies completed for the EIS and the EIS itself identified environmental and cultural impacts that may result from the Proposed Action, and also presented, where appropriate, suggested mitigation measures. Specifically, as it relates to surface water resources and stream habitats, it is anticipated that the Proposed Action will have an adverse impact reducing the amount of stream habitat units that would exist under natural flow conditions as discussed in Section 4.2.1 and Appendix A of the EIS. As it relates to flora and faunal resources, the Proposed Action is anticipated to include maintenance and repair activities that have the potential to impact native flora and faunal resources, especially in pristine environments as discussed in Section 4.4 and Appendix C of the EIS.

As it relates to historical and archeological resources, due to the CWRM D&O, some of the sluice gates must be removed from the stream diversions of particular streams, regardless of whether the Water Lease is issued or not as discussed in Section 4.5 and Appendix D of the EIS.

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The effect of the removal of the sluice gates is minimal, as they do not drastically alter the overall physical appearance of the historic EMI Aqueduct System. As it relates to cultural resources and practices, the Proposed Action has the potential to have impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, and access as discussed in Section 4.6 and Appendix F of the EIS. However, with respect to potential regional impacts, in the CIA included with the Draft EIS, Cultural Surveys Hawai'i (CSH) recommended that qualified professionals who possess an understanding of stream flow mechanics, water diversion, and climate statistics within the License Area address certain questions that were raised during consultation. Questions such as "how much water is being diverted at each location of intakes, ditches, dams, pipes, and flumes?", "how much water is being diverted from East Maui to Central Maui?", and "is climate change accounted for?" Since the publication of the Draft EIS, CSH has reviewed the other technical studies prepared for the EIS and added that in addition to the recommendations provided by the other technical studies, that the Proposed Action include monitoring and public reporting of stream flow volumes.

With respect to potential impacts to taro farming, the specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapīpī, and Waiohue. Cultural Surveys Hawaii noted that these streams were addressed through the CWRM D&O proceedings. With respect to impacts to freshwater ecosystems, CSH identified the potential for impacts to Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapīpī, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. And CSH also noted that these streams were addressed through the CWRM D&O proceedings. To address the potential for impacts to these resources/practices, similar to the recommendation noted above, CSH recommends that the Proposed Action include monitoring and public reporting of stream flow volumes, and that EMI's current system of flow meters and totalizers that are reported to CWRM on a monthly basis be maintained and upgraded as needed in order to report accurate information on stream flow and diversion amounts to the community.

With respect to cultural sites, CSH acknowledged that no studies had identified any burial sites within the License Area. Nevertheless, CSH recommended that any personnel involved in access, maintenance, or any other related activities within the License Area be informed of the possibility of inadvertent cultural finds, including human remains, and that in the event any such

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sites are inadvertently discovered within the License Area, those discoveries should be reported immediately to the State Historic Preservation Division (SHPD). Moreover, CSH recommended that in the event that iwi kūpuna and/or cultural finds are encountered, consultation with lineal and cultural descendants of the area should be conducted. CSH also recommended, as a proactive measure, that there be an access policy for cultural practitioners within the License Area, similar to the access policy in use for hiking groups. Any such policy would need to be developed in consultation with the State (as landowner of the License Area), and the Water Lease lessee, and in consideration of applicable law related to traditional and customary Native Hawaiian rights. It is noted that in issuing the CWRM D&O, the CWRM identified the minimum criteria to be satisfied in order for a traditional and customary right to be protected by the constitution and State law. See CWRM D&O pages 242 through 245, citing the Supreme Court's holding on this subject in *State v. Pratt*, 127 Hawai'i 206, 277 P. 3d 300 (2012).

As it relates to socio-economic characteristics, the Proposed Action is anticipated to have a number of economic and fiscal impacts as well as agricultural economic related impacts, as discussed in Section 4.7 and Appendices F, G, and I of the EIS. All of these Sections of the EIS and appended reports discuss mitigative measures to the various impacts of the Proposed Action.

Comment 10: *The presumption that adverse impacts have already been addressed through the IIFS decision no doubt limits A&B from considering ways in which cultural practices and the environment may be adversely impacted beyond the 27 streams petitioned for, which make up only a fraction of the 33,000 acre License Area which encompass hundreds of streams and tributaries and miles of coastline.*

Response 10: Your conclusion that the EIS assumes that adverse impacts have been addressed through the IIFS decision is incorrect. See Response #9 above. In addition, contrary to your statement that there are "hundreds" of streams within the License Area, the total number of streams/tributaries within the License Area that could be diverted under the Proposed Action is 25 out of the 36 total streams (which includes its tributaries) as indicated by Table 1-3 in the Final EIS. Your statement that the EIS presumes "*adverse impacts have already been addressed through the IIFS decision [the CWRM D&O]*" is not consistent with the analysis in the EIS. For example, the HSHEP model provided in Appendix A presented an analysis of 100% of the streams within the License Area that could be diverted by the EMI Aqueduct System. Similarly, the Cultural Impact Assessment for the Nāhiku, Ke'anae, Honomanū and Huelo License Areas provided as Appendix F to the Draft EIS, and as further supplemented, includes a regional analysis of the entire License Area, including the non-petitioned streams and the petitioned-streams. Regarding your comment about "miles of coastlines", the study titled East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry, provided as Appendix B, determined that the nutrient delivery from streams in the License Area to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient

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concentrations in the ocean do not change substantially, there is no pathway for fishing to be negatively impacted. In other words, the analysis presented in Appendix B concluded that impacts from the Proposed Action to ocean fish are negligible. Please see also our Response #6 regarding the numerous technical reports and environmental subject areas covered in the EIS.

Comment 11: *Notably, since the amended IIFS for a portion of the 27 petitioned streams provides only "minimum streamflow levels," it is questionable whether the IIFS adequately addresses cultural and environmental protections for those streams. To argue that there is no longer an impact because minimal standards are being met is not only flawed but dangerous when applied to the overall analysis of an allegedly objective report. Rather than thoroughly addressing potentially adverse impacts and proposing measures for "avoiding, minimizing, rectifying or reducing" those impacts as required by the EIS rules, A&B has merely provided a "self-serving recitation of benefits and a rationalization of the proposed action." HAR § 11-200-14. In summary, the DEIS does not provide an objective and accurate analysis of the numerous potential impacts of the Proposed Action and therefore does not provide the BLNR with an adequate roadmap on how to mitigate those impacts moving forward.*

Response 11: We assume that your comment that, "*the amended IIFS for a portion of the 27 petitioned streams provides only 'minimum streamflow levels,'*" refers to instream flow standards requiring the minimum amount of streamflow that must remain in any given stream. For clarification, for the East Maui IIFS decision, the minimum stream flows that the CWRM D&O ordered was: 1) full flow restoration for 10 of the petitioned streams; 2) habitat restoration (H₉₀) for five of the petitioned streams; 3) connectivity flow restoration for seven of the petitioned streams; and 4) no change in the IIFS for three of the petitioned streams (one of which is below the ditch diversion system and has never been diverted by the EMI Aqueduct System). Importantly, Trutta Environmental Solutions, LLC, concluded that the IIFS set under the CWRM D&O, from a habitat availability perspective, did "a good job at improving instream habitat over a wide range of streams." See Appendix A at page 12. With respect to the HSHEP model, results were presented for 100% of the streams diverted by the EMI Aqueduct System within the License Area as shown on pages 4-56 to 4-67 which is Figure 12 in the HSHEP report (Appendix A).

Moreover, as discussed in Response #9 above, the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields, including a description of the existing environment and are not limited to the streams subject to the CWRM D&O. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements. The Draft EIS also included and relied upon nine technical studies (Appendix A, Assessment of The Environmental Impacts of Stream Diversions on 33 East Maui Streams Using the Hawaiian Stream Habitat Evaluation

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Procedure (HSHEP) Model); Appendix B, East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry; Appendix C, Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease; Appendix D, Historical Structure Assessment East Maui Aqueduct System; Appendix E, Archaeological Literature Review and Field Inspection for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas; Appendix F, Cultural Impact Assessment for the Nāhiku, Ke‘anae, Honomanū and Huelo License Areas; Appendix G, A&B Proposed Water Lease for the Nāhiku, Ke‘anae, Huelo, and Honomanū Social Impact Assessment; Appendix H, Economic and Fiscal Impact Study Proposed Water Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Area; and Appendix I, East Maui Water Lease: Agricultural and Related Economic Impacts). We acknowledge, pursuant to HAR § 11-200-17(m), an EIS must consider "mitigation measures proposed to avoid, minimize, rectify, or reduce impact[.]" A brief summary of anticipated impacts and recommended mitigations measures is provided below with references made to the more detailed sections of the EIS that fully address these matters.

Regarding stream habitats, Section 4.2.1 of the Final EIS has been updated to include a discussion of general mitigation measures as shown on pages 4-61 to 4-67.

Chapter 4 of the EIS, based upon the technical studies and otherwise, provides several mitigation measures recommended for the East Maui License Area.

Field surveys and habitat modeling conducted by Trutta Environmental Solutions, Inc. (Parham 2019) as part of the EIS for the Proposed Action support the IIFS flow restoration scenario in improving instream habitat conditions for native amphidromous stream animals. Native species habitat that were evaluated as part of the study included ‘O‘opu nākea (freshwater fish family Gobiidae), ‘O‘opu alamo‘o (freshwater fish family Gobiidae), ‘O‘opu naniha (freshwater fish family Gobiidae), ‘O‘opu nōpili (freshwater fish family Gobiidae), ‘O‘opu akupa (freshwater fish family Eleotridae), ‘Ōpae kala‘ole (freshwater shrimp), ‘Ōpae ‘oeha‘a (freshwater prawn), and Hihīwai (freshwater snail). Please note that the HSHEP model focuses on changes in instream habitat, entrainment, or barriers to passage for these migratory native stream species with respect to modifications of the stream environment. In the case of the East Maui streams covered by the Draft EIS, the primary impact is streamflow diversion. While the HSHEP model does account for changes in habitat with respect to instream structures, these are minuscule in comparison to the loss of habitat in dewatered stream segments and the entrainment of animals into the EMI Aqueduct System. Thus, the primary mitigation measure is flow restoration and the HSHEP modeling intent was to quantify the flow restoration effect on the native stream species. Thus, the results of the HSHEP model document mitigation measures to restore native stream life to various restoration targets.

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The terrestrial flora and fauna study prepared by SWCA Environmental Consultants (2019) as part of the EIS has determined that the Proposed Action, specifically the diversion of water within the existing EMI Aqueduct System, will have no impact on terrestrial flora and fauna resources, nor will the Proposed action increase habitat fragmentation over current conditions subject to avoidance and minimization measures.

The terrestrial flora and fauna study recommended the following avoidance and minimization measures to address impacts to flora (SWCA Environmental Consultants 2019:24):

- A botanical monitor should be on-site during any maintenance activities on cliffsides, near waterfalls, and in other native species-dominated areas to ensure that no listed or candidate species are impacted.
- To avoid the unintentional introduction or transport of new invasive species into more pristine portions of the License Area during aqueduct maintenance activities, all equipment and vehicles arriving from outside the License Area should be power washed and inspected prior to any maintenance activities and any time equipment is relocated on cliffsides, near waterfalls, and in other native species-dominated areas in the License Area.
- Construction material arriving from outside Maui should also be washed and/or visually inspected (as appropriate) for excessive debris, plant materials, and invasive or harmful non-native species (plants amphibians, reptiles, and insects).
- When possible, any raw material used in maintenance activities should be purchased from a local supplier on Maui to avoid introducing non-native species not present on the island.
- Inspection and cleaning activities should be conducted at a designated location. The inspector must be a qualified botanist/entomologist able to identify invasive species that are of concern relevant to the point of origin of the equipment, vehicle, or material.

The terrestrial flora and fauna study recommended the following avoidance and minimization measures to address impacts to fauna (SWCA Environmental Consultants 2019:24-25):

- Regular on-site staff should be trained to identify special-status species with the potential to occur on-site and should know the appropriate measure to be taken if they are present.
- If tree trimming occurs in the *'i'iwi*, Maui parrotbill and crested honeycreeper range (as defined by SWCA Section 5.2.5) from November to June, a qualified biologist should survey the trees for active nests of these species.
- If a downed tree must be removed from a road, trail, or other passageway, it will be inspected for the presence of active bird nests, specifically the nest of an MBTA-

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- protected species, that may have been present prior to the tree falling. If an active nest is found, it should be protected in place until the chicks fledge.
- If a Hawaiian goose, Hawaiian stilt, or Hawaiian coot is observed in the area during construction activities, all activities within 100 ft (30 m) of the species should cease, and work should not continue until the species leaves the area on its own accord.
 - If a Hawaiian goose nest is discovered, all activities within 150 ft (46 m) of the nest should cease, and the USFWS should be contacted. Work should not resume until directed by the USFWS.
 - If felling of standing trees occurs during the bat breeding season, direct impacts could occur to juvenile bats that are too small to fly but too large to be carried by a parent. To minimize this impact, no trees taller than 15 ft (4.6 m) should be trimmed or removed between June 1 and September 15.
 - The use of barbless top-strand wire is recommended for all fence construction to avoid entanglement of Hawaiian hoary bat.
 - A qualified biologist should work closely with the USFWS and monitor ESA-listed damselflies to ensure activities do not have a negative impact.

The terrestrial flora and fauna study recommended the following avoidance and minimization measures to address impacts to seabirds (SWCA Environmental Consultants 2019:25):

- Construction activity should be restricted to daylight hours as much as practicable during the seabird peak fallout period (September 15 to December 15) to avoid the use of nighttime lighting that could attract seabirds.
- All outdoor lights should be shielded to prevent upward radiation. This has been shown to reduce the potential for seabird attraction. A selection of acceptable, seabird-friendly lights can be found online at the Kauai Seabird Habitat Conservation Program website: <http://www.kauai-seabirdhcp.info/lighting-homes-businesses/>.
- Outside lights not needed for security and safety should be turned off from dusk through dawn during the fledgling fallout period (September 15 to December 15).

The terrestrial flora and fauna study has recommended the following avoidance and minimization measures to address impacts to the Blackburn's Sphinx Moth (SWCA Environmental Consultants 2019:37):

- A biologist familiar with the species should survey areas of proposed activities for Blackburn's sphinx moth and its larval host plants prior to work initiation. Surveys should be conducted during the wettest portion of the year (usually November–April or several weeks after a significant rain) and within 4 to 6 weeks prior to construction. Surveys should include searches for eggs, larvae, and signs of larval feeding (chewed

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- stems, frass, or leaf damage). If moths or the native aiea (*Nothocestrum* spp.) or tree tobacco over 3 feet tall are found during the survey, USFWS should be contacted for additional guidance to avoid take.
- If no Blackburn's sphinx moth, aiea, or tree tobacco are found during surveys, measures should be taken to avoid attraction of Blackburn's sphinx moth to the project location to prohibit tree tobacco from entering the site. Tree tobacco can grow greater than 3 feet tall in approximately 6 weeks. If it grows over 3 feet, the plants may become a host plant for Blackburn's sphinx moth. Therefore, any tree tobacco less than 3 feet tall should be removed. The site should be monitored every 4 to 6 weeks for new tree tobacco growth before, during, and after the proposed ground-disturbing activity. Monitoring for tree tobacco can be completed by any staff, such as groundskeeping or regular maintenance crew, provided with picture placards of tree tobacco at different life stages.

The social impact assessment prepared by Earthplan as part of the EIS has recommended the establishment of "Core Working Group" comprised of geographic communities, environmental, agriculture, and business interests, and public agencies. The group would serve as a forum for exchanging ideas and collaborative efforts, as well as provide feedback and suggestions to Mahi Pono. Each member of the Core Working Group would be expected to reach out to their own networks to extend the discussion beyond the Core Working Group. While there would likely be strong differences in perspectives and opinions, the Core Working Group would need to find ways to establish core principles, common ground and manageable solutions.

The social impact assessment also recognizes that East Maui residents have a unique relationship with the Proposed Action. While impacts are first and foremost culture-related, they are also entrenched in a social context that is the basis for this mitigation recommendation. The social impact of diverting water is generational, one that has affected livelihoods, family cohesion, the ability to integrate with environment for food gathering and recreation, resource stewardship, and personal connections or disconnections with values inherent in their lifestyles.

For the Ke'anae – Wailuānui community to move past historical impacts, the social impact assessment recommends that there needs to be established a point of departure. Mitigation needs to go beyond the physical restoration of streams. It needs to address the social context and include apology and reconciliation. This needs to be done within a cultural foundation that binds the community together, and key players, including Mahi Pono, public agencies and elected officials. The manner and forum for this process should be defined by cultural leaders integral with the process.

In addition to the recommendation provided by the other technical studies conducted as part of the EIS, CSH recommends that the Proposed Action include monitoring and public reporting of

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stream flow volumes. At present, EMI maintains a system of flow meters and totalizers that are reported to CWRM on a monthly basis. CSH recommends that this system is maintained and upgraded as needed in order to report accurate information on stream flow and diversion amounts to the community.

Mason Architects recommends documentation of the sluice gates with photos and location sketch plans conforming to the Historic American Engineering Survey (HAER) standards where sluice gates are to be removed or altered is proposed. Many of the sluice gates are unique to a particular stream, and documentation will ensure that nothing is lost over time.

CSH recommends mitigative measures to taro farming impacts, freshwater ecosystem impacts, cultural sites, and access related to the Proposed Action.

Comment 12: *The DEIS Fails to Adopt Appropriate Baseline Conditions.* In 2003, Judge Hifo resolved the issue of what would constitute the appropriate baseline condition for A&B in preparing an EIS:

... the Court finds that Confederated Tribes and Bands of the Yaltima Indian Nation v. Federal Energy Regulatory Commission, 746 F.2d 466, 475-477 (gti' Cir. 1984), which held that the relicensing of a power plant needed to be analyzed as if it were the original licensing of the plant, is persuasive, as appellants argued, and would require an environmental assessment (EA), and perhaps an environmental impact statement (EIS), depending upon the result of the EA, for a long-term lease which constitutes the first long-term lease of this water since at least 1985.

Hifo Order (emphasis added).

Response 12: Contrary to your comment, Judge Hifo's 2003 Order, quoted above, did not examine or opine as to appropriate baseline conditions for an EIS analysis. The Order merely stated that the issuance of the long-term lease, which is the first long-term water lease for the EMI Aqueduct System since 1985, required environmental review and is not an action that could be exempted from environmental review pursuant to the exemptions authorized under HAR § 11-200-8.

Notwithstanding the fact that actions that involve "operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" are eligible for exemption determinations (see HAR § 11-200-8(a)(1)), Judge Hifo determined that such an exemption for a new Water Lease was inconsistent with statute. Specifically, under HRS § 343-6, exemptions are appropriate for actions that will probably have "minimal or no significant effects on the environment." Judge

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Hifo determined that a lease of any or all excess water from the 33,000 acres of State-owned land does not constitute a minimal or no significant effect on the environment. As such, Judge Hifo reversed the applicable holding in the BLNR's Order of January 24, 2003, which held that the disposition of the Water Lease was exempt from further environmental review so long as it merely continued the existing operations and did not expand or change the uses. This EIS is the direct result of Judge Hifo's Order - Judge Hifo ordered that the Water Lease could not be issued until an environmental review was completed.

Judge Hifo's reliance on *Confederated Tribes and Bands of Yakima Indian Nation v. Fed. Energy Regulatory Comm'n*, 746 F.2d 466 (9th Cir. 1984) (hereinafter "*Yakima Nation*") was not to establish any sort of baseline for this EIS. The issue in *Yakima Nation* was not about baseline conditions for an EIS analysis. The issue was whether relicensing of a hydroelectric power plant in 1980, which had originally been licensed in 1930 and therefore predated the enactment of NEPA, required the preparation of an EIS. Although the power plant had been in operation for 50 years, the Ninth Circuit held that, based upon the Federal Power Act, which limited the maximum term of any license to 50 years, relicensing was "substantially equivalent to issuing an original license" and the requirements for preparing an EIS generally applied. *Yakima Nation* did not address what baseline conditions were to be used in the EIS required for the relicensing, but held only that an EIS was required.

Comment 13: *In this instance, under the DEIS, A&B sets the baseline condition at the conditions under which A&B has historically diverted the streams, contrary to an explicit court ruling, from which A&B never appealed after final judgment. As it states:*

Baseline Condition — Full Diversion

The lower boundary for the HSHEP model was full diversion by the EMI Aqueduct System in its current configuration as existed under sugar cultivation, which was the prevailing conditions for nearly 100 years. (Trutta, p. 41, 2019) The Full Diversion scenario assumes that all the diversions in the EMI Aqueduct System are fully open or diverting 100% of available low flows, roughly analogous to the stream's baseflow. The diversions in the EMI Aqueduct System were built to capture 100% of normal low flows plus some small amount of storm runoff. Hawaiian streams are "flashy", meaning discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions. When low flow conditions persist and water needs call for all the low flow to be diverted, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production. (Trutta, p. 55-56, 2019) Under Full Diversion conditions, approximately 46% of the total

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HU remained; or conversely, Full Diversion conditions reduced the number of HU by approximately 54%.

DEIS 4-56 (emphasis added). This DEIS cannot identify the fully diverted status of the streams in the license areas as the baseline condition. Comparing the resulting environmental consequences of its proposed diversions from this perspective would make a mockery of HRS chapter 343 and its implementing rules, HAR subchapter 11-200, as well as defy a court precedent on this very issue.

Response 13: We respectfully disagree with your suggestion that there is a relevant court ruling regarding baseline conditions. Please see Response #12 for our response to your assessment of the meaning of Judge Hifo's Order.

Your extensive quotation from page 4-56 of the Draft EIS ignores the description of the "Baseline Condition - Natural Flow" which was provided in the page immediately prior to the page you cited. That description is as follows:

Baseline Condition – Natural Flow

The EMI Aqueduct System has diverted water in its current configuration for nearly 100 years and baseline environmental condition studies (including the distribution and habitat of native stream animals) prior to its construction do not exist. Although there were no studies that describing East Maui stream biota conditions as they existed prior to the construction of the EMI Aqueduct System, the HSHEP model provides a means of estimating the naturally available habitat for stream species under natural conditions, i.e., no water diversions and no impacts on passage or entrainment of animals. (Trutta, p. 12, 2019) Trutta cautions, however, that suitable habitat (number of HU's), which is the focus of the HSHEP model, is not the only thing that may affect species populations. Other factors, such as pollution, disease, or competition with introduced species may also influence the distribution and densities of native animals. (Trutta, p. 66, 2019) This Natural Flow condition, while not, strictly speaking, a baseline condition in that it has not existed for at least 100 years, nevertheless sets the upper boundary for the HSHEP model. (Trutta, p. 41, 2019) In other words, the Natural Flow condition represents 100% of the HU in the 33 streams assessed. Trutta estimates a total of 1,982,176 HU for all the streams in the License Area. (Trutta, p. 57, 59, 60, 61, 2019)

In other words, the Draft EIS and the HSHEP model contemplated an upper and lower boundary for environmental assessment purposes. The lower boundary (the Full Diversion condition) reflects the maximum impact or maximum amount of habitat lost due to diversions. The

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proposed Water Lease proposes diversions considerably less than what was done under the Full Diversion condition. The upper boundary (the Natural Flow condition) provides context to the maximum number of habitat units available for native species. The assumption with the Natural Flow condition is if no modifications or diversions existed, then this would be the maximum available habitat for native stream species. However, please note that the above excerpt has been revised based on the updated report included in Appendix A as shown on pages 4-61 to 4-62.

The HSHEP model also reviewed a diversion scenario that was in compliance with the IIFS set forth under the CWRM D&O, and a "no action" alternative where 30% of the flow remaining after compliance with the IIFS under the CWRM D&O is diverted.

The combination of the lower and upper bounds provide the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as by definition the changes must fall somewhere between 100% diversion and 0% diversion.

The two scenarios presented, "2018 IIFS (Proposed Action)" and "No Action Alternative (30% remaining flow diversion)" are examples of how different flow restoration scenarios result in different amounts of habitat restored, within the lower and upper bounds. The HSHEP model is used to quantify these differences based on flow restoration changes at diversions. The HSHEP follows a logical approach and systematically addresses on-the-ground conditions.

Comment 14: *Moreover, considering the harshest possible alternative of complete diversion under sugar cultivation, the amount of diversion under the Proposed Action seems like a reasonable compromise and a far better alternative. Pursuant to HAR 11-200-17(g), the DEIS must include a "description of the environment in the vicinity of the action, as it exists before commencement of the action." In order to conform to the actual facts, this description should include post sugar plantation closure conditions that were present immediately before the commencement of the action. HC&S stopped using irrigation water in early 2016. Mahi Pono only recently began test crop cultivations that require water. Hence, there was at least a two-year gap in the supposed "continuation" of the EMI aqueduct at any level of use by this successor-in-interest to HC&S's irrigation water use. Therefore, using the conditions that existed at the height of water diversion which no longer existed prior to the proposal of the Water Lease as the lower boundary in any assessment of the Proposed Action is a flawed approach and is in direct opposition to both legal precedent and the actual facts.*

Response 14: As explained in Response #13, the HSHEP model provided a range for the purposes of scientific assessment. It provided information on estimated habitat conditions at the height of diversions (to set a ceiling for the purposes of assessment, as no request has been made

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to divert to that extent, and in any event, diversions of that extent would violate the CWRM D&O), and estimated habitat conditions under a theoretical scenario where absolutely no water was diverted. This range was provided for scientific analysis. Note that practically speaking, even under the No Action or no Water Lease scenario, the Applicant has the right to divert approximately 30% of the water available from the Collection Area without any Water Lease. Your comment neglects to acknowledge that the HSHEP model also included a Natural Flow baseline condition scenario, i.e. a scenario where no surface water was diverted.

It is acknowledged that HAR § 11-200-17(g) requires a Draft EIS to include "a description of the environment in the vicinity of the action, as it exists before commencement of the action[.]" The Draft EIS complies with this requirement. For example, Section 2.1.4 acknowledges that A&B terminated sugarcane farming in 2016. It is explained how the average delivery of water through the EMI Aqueduct System to the Central Maui agricultural fields averaged 126 mgd between 2004 and 2013. The Draft EIS also explains how (at the point of publication of the Draft EIS) the majority of the Central Maui agricultural fields were not in active cultivation, and only approximately 20-25 mgd was being diverted by the EMI Aqueduct System. Consistent with the requirement to assess secondary impacts, the EIS describes the anticipated water use and related activities at full implementation of the Mahi Pono farm plan, which was presented as Mahi Pono's 2030 vision. As explained in Section 2.1.5., it is estimated that 10 years will be required for Mahi Pono and lessees to remove volunteer sugarcane and weeds from the approximately 30,000 acres, amend soils, install field improvements, build warehouses and other structures, and plant crops.

In response to your comment that HC&S stopped using irrigation water in early 2016, please note that HC&S stopped sugarcane cultivation in December 2016. See, e.g., EIS Section 2.1.2. In the period that intervened between the cessation of sugar cultivation and Mahi Pono's purchase of the Central Maui agricultural fields in December 2018, A&B endeavored to transition the fields to diversified agriculture and continued to supply water to the MDWS for its Upcountry Maui users. As A&B orally reported to BLNR at its meetings held on November 9, 2017 and November 8, 2018:

- Over the course of 2017, leases were entered into for 4,500 acres of active farming and ranching.
- By 2018, there was 3,000 acres in cultivated (ie. irrigated) pasture, with another 2,000 acres being prepped for irrigated pasture; a 30-acre trial planting of pongamia (an energy plant) had been established, with plans to expand to 250 acres; 600 acres were set aside for another renewable energy project with trial plantings undertaken on 250 acres in 2018; and another 800 acres were leased to farmers for various food and feed crops. So a total of 4,080 acres under active cultivation with 2,000 more acres under preparation.

Moreover, in light of the fact that Mahi Pono has continued to expand its farming in Central Maui, and water has continued to be diverted through the EMI Aqueduct System to support that

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effort and continue the supply to MDWS, further updated information has been provided in Section 2.1.4 of the EIS regarding the water diversions authorized for 2021 and Mahi Pono's expected use of that water. See pages 2-30 and 2-32 of the Final EIS. Hence, the Draft EIS, and the Final EIS, correctly describe the environment in the vicinity of the Proposed Action as it exists before the issuance of the requested Water Lease.

Comment 15: *Median Flow Requirements Fail to Accurately Quantify Diversion Amounts.*

Throughout the DEIS it is assumed that under the Proposed Action the Water Lease would grant the right to collect up to the maximum amount of water from streams within the License Area allowed by the CWRM D&O, which is estimated to be approximately 87.95 mgd. DEIS at 2-8. This median flow required by the CWRM D&O, however, is the total estimated flow diverted from dozens of streams (and their tributaries) and measured at Honopou Stream, where the EMI Aqueduct System leaves the License Area. Id. The allowable diversion amount under the Water Lease, however, provides little assurance that each stream's required median flow will be met in the absence of quantifying actual diversion amounts on a stream-by-stream basis. Without accurate calculations or estimates regarding the amount of water taken from each individual stream, there can be no accurate assessment of the potential impacts those diversions would have on the streams and the surrounding environment.

Response 15: You are correct that the Draft EIS assesses the Proposed Action under the assumption that the maximum amount of water available for diversion (estimated to be 87.95 mgd from the License Area as discussed in Section 2.1.2 of the Draft EIS), will be awarded in the proposed Water Lease.

Regarding your comment that the allowable diversion amount under the Water Lease provides little assurance that each stream's required median flow will be met, please note that the CWRM D&O mandates the minimum amount of water that must remain in certain streams (the IIFS), not a requirement that a stream's median flow be met. The CWRM is charged with ensuring the IIFS are being met in the various streams. EMI has made certain adjustments to the EMI Aqueduct System – pursuant to guidance provided by CWRM staff and subject to their verification – to maintain sufficient natural flow to meet the designated IIFS.

It is our understanding that the IIFS is currently being met and will continue to be complied with under the Proposed Action.

What is important in ensuring the IIFS are being met and streams are being protected are the measurements of the amounts of water flowing in these streams at the designated IIFS locations, not how much water is being diverted from these streams. It is our understanding that the CWRM will ensure IIFS are being in each of the specific streams. It is not feasible to measure diversions on a stream-by-stream basis but, again, the diverted amounts are not what is important

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with respect to stream protection. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. In addition, proper gauging would involve some form of stream alteration, such as a weir in order to properly measure stream flow. EMI has never conducted stream gauging as that lays within the expertise the CWRM and the USGS.

As noted in the CWRM D&O, the measurements that EMI take are at Honopou Stream and Māliko Gulch. However, for the purpose of measuring the aggregate flow from entire License Area, the Honopou Stream measurement reading was used.

As discussed in Draft EIS Section 2.1.2 (East Maui/License Area) and 2.1.4 (Central Maui Field System), the long-term average delivery of water by the EMI Aqueduct System up until 1986 had been approximately 165 mgd (prior to any use of water by the MDWS or HC&S on the agricultural fields or for HC&S industrial activities). This measurement was taken at Maliko Gulch. Under the Proposed Action, it is estimated that approximately 87.95 mgd will be diverted from the License Area, and an additional 4.37 mgd will be diverted in between Honopou Stream and Māliko Gulch. Thus, an estimated total of approximately 92.32 mgd would be conveyed to supply the MDWS for users in Upcountry Maui and the agricultural fields in Central Maui. The Proposed Action will also ensure the continued delivery of water for the Nāhiku community, for which MDWS, under a contractual agreement contingent upon issuance of revocable permits or a water lease, is allowed to draw water from EMI's land through EMI's Nāhiku Tunnel. Similarly, other contractual agreements provide water to MDWS from other sources (i.e. not East Maui surface water), and those agreements are also contingent upon issuance of the Water Lease or water revocable permits.

Regarding your comment that *“without accurate calculations or estimates regarding the amount of water taken from each individual stream, there can be no accurate assessment of the potential impacts those diversions would have on the streams and the surrounding environment,”* please note that the HSHEP model used statistical regression estimates for discharge values (BFQ₅₀), which is a method to produce consistent estimates of discharge at ungauged locations. The streamflow estimates are based on the regression relationships published by the USGS in:

Gingerich, S.B., 2005, Median and Low-Flow Characteristics for Streams under Natural and Diverted Conditions, Northeast Maui, Hawaii: Honolulu, HI, U.S. Geological Survey, Scientific Investigations Report 2004-5262, 72

While verifying the baseflow metric with field data is preferable, it will take years to create accurate baseflow values for every stream/tributary in the License Area. If some type of statistical relationship between known gauged sites and ungauged sites was not applied, there

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would be no way to make comparable estimates of habitat lost at the diversion locations. Hence, it is our position that the HSHEP model and the analysis of the report included as Appendix A to the EIS accurately assesses the potential impacts of the diversions on stream habitat under the Proposed Action.

Comment 16: *The DEIS Fails to Disclose Diversion Locations and Diversion Amounts. In our early consultation comments and comments on the EISPN we expressed that the EIS should provide at a minimum: • Full disclosure of every single diversion along the East Maui Irrigation system (including photographs and descriptions as to how the diversion operates, how much water it diverts from the stream daily (on average and at minimum and maximum), and its precise location);*

Response 16: EMI has gauges located in several locations across the License Area. These gauges measure the flow in the ditches only. It is not feasible to measure flow in the streams, as there are limited areas that contain the necessary control points to accurately measure streamflow. Further, what is important relative to stream protection is measurement of water flowing in the stream, not the amount diverted from each stream. Similarly, it is not feasible to provide total diversion amounts by a license area, i.e. diversions amounts only from Huelo, diversion amounts only from Nāhiku, etc. While the USGS used to have gauges at each of the License Area boundaries, those gauges were not on individual streams, they were in the ditches at each license area boundary. However, due to USGS cost cutting, several of those gauges were removed. It is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams. This proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. In addition, proper gauging would involve some form of stream alteration, such as a weir in order to properly measure stream flow. EMI has never conducted stream gauging as that lays within the expertise the CWRM and the USGS.

Regarding your comment about photographs and descriptions as to how the diversions operate, as discussed in Section 1.3.1 of the Draft EIS, due to the complexity of the EMI Aqueduct System and the level of detail that can be displayed on a map, not all minor diversions could be depicted that are associated with a stream/tributary. Thus, an electronic drawing of the EMI Aqueduct System was georeferenced by Akinaka & Associates, Ltd. (Akinaka) to depict the major diversions on East Maui streams which is Figure 1-1 of the Draft EIS, which has been updated to be consistent with Table 1-3 in the Final EIS as provided on pages 1-19 to 1-22. We also note that EMI registered with CWRM all of its diversions associated with the EMI Aqueduct System in or around 1989.

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Moreover, Mason Architects prepared the Historical Structure Assessment East Maui Aqueduct System (HSA), which is included in the EIS as Appendix D and summarized in Section 4.5 of the EIS. The HSA was conducted to make an evaluation and assist SHPD in making a determination on the potential impact to historic properties. The HSA documented 20 representative features of the EMI Aqueduct System, 19 of which were stream diversions. The 19 stream diversions were categorized into three categories: Type A, B, and C Stream Diversions. Specifically, Section 4.5 of the Draft EIS states:

Mason Architects documented 20 EMI Aqueduct System features during their May 2018 field survey and 31 sluice gate examples. Of these features, 19 were stream diversions, the most common of which (i.e. 14 of the 19 stream diversions surveyed) was “Type A Stream Diversion.” The “Type A Stream Diversion” operates by using a dam across the stream bed equipped with a sluice gate to impound water. When the sluice gate is closed, water is impounded behind the dam, such that it can flow out of the impounded pool, and into the ditch system through the intake. When the sluice gate is open, water is able to flow through the dam and is not impounded to a level to reach the intake for the ditch system. A variation (Type A Variation Stream Diversion) of this feature was also documented in Mason Architects field study. This diversion operates with a stilling wall that separates the impounded pool from the intake. When the sluice gate is closed, water will flow overtop the stilling wall and into the intake of the ditch system. Some of the stilling walls have perforations to allow for water to flow through the walls as well. Another variation is a sluice gate at the intake, and when the sluice gate is open, water can flow through the intake into the ditch system.

“Type B Stream Diversion”, accounted for three (3) out of the 19 stream diversion features. “Type B Stream Diversion” operates by using a weir across the stream bed to impound water to a level that will reach the intake. There are sluice gates at the intake, and when they are open, water is able to flow into the intake into the ditch system. When the sluice gates are closed, water is prevented from entering the intake, and flows over the weir, and continues downstream. There was an instance where the intake channel had an additional throw-out gate for the discharge of excess water that would make its way back into the stream.

“Type C Stream Diversion” accounted for two (2) out of the 19 stream diversion features documented. “Type C Stream Diversion” operates by using a weir across the stream bed to impound water that feeds into the intake. The feature does not have a sluice gate, and always open for water to flow into the intake. The intake

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channel has a throw-out sluice gate to control how much water is entering the ditch, and when it is open, water returns back to the stream.

Mason Architects also documented a throw-out sluice gate (“Type D Ditch Water Throw-out”) located in the ditch system that would discharge water into a gulch.

During the field survey, there were also various types of sluice gates documented such as ratchet, geared, threaded-shaft, and a board adjusted sluice gates. A sluice gate is a panel of metal, wood boards, or plastic boards that slides vertically in grooves that are set in the sides of the waterway channel. Four types of sluice gates were noted during the field work. Three types use various mechanisms, such as a ratchet, a gear, or a threaded shaft, to move a solid panel vertically in slots set in the channel, and one type is defined by a series of horizontal boards that are slid up and down vertically in slots in the channel. These are explained in more detail in the study (See Appendix D).

Hence, Appendix D of the EIS contains more information regarding the surveyed stream diversions which also includes photographs. Appendix 1 of the Assessment of The Environmental Impacts of Stream Diversions on 33 East Maui Streams Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report provided as Appendix A of the EIS also has photographs of various steam diversions and is included with the Final EIS.

Comment 17: *Pursuant to HAR § 11-200-17(e)(6), the DEIS should contain a project description that includes a summary of "technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact." The DEIS fails to adequately disclose how much water will be diverted and when.*

Response 17: Regarding your comment that the Draft EIS should contain a project description that includes a summary of technical data, diagrams, and other information pursuant to HAR § 11-200-17(e)(6), please note that Chapter 2 of the EIS describes the Proposed Action in detail, including a description of Mahi Pono's diversified agricultural plan for Central Maui, and provides technical data and diagrams. Moreover, as discussed in Response #6 above, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields, including a description of the existing environment. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural

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Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis therein relies in part on the nine technical studies (Appendix A, Assessment of The Environmental Impacts of Stream Diversions on 33 East Maui Streams Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model; Appendix B, East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry; Appendix C, Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease; Appendix D, Historical Structure Assessment East Maui Aqueduct System; Appendix E, Archaeological Literature Review and Field Inspection for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas; Appendix F, Cultural Impact Assessment for the Nāhiku, Ke‘anae, Honomanū and Huelo License Areas; Appendix G, A&B Proposed Water Lease for the Nāhiku, Ke‘anae, Huelo, and Honomanū Social Impact Assessment; Appendix H, Economic and Fiscal Impact Study Proposed Water Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Area; and Appendix I, East Maui Water Lease: Agricultural and Related Economic Impacts) that are appended to the EIS.

Contrary to your comment that the "DEIS fails to adequately disclose how much water will be diverted and when", the amount of water proposed for diversion is discussed throughout the EIS. For example, Section 2.1.2 of the EIS explains that with the issuance of the Water Lease under the Proposed Action, the EMI Aqueduct System would divert only the maximum allowable amount under the CWRM D&O from streams within the License Area, which is estimated to be approximately 87.95 mgd. The EMI Aqueduct System is estimated to divert an additional 4.37 mgd from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Maliko Gulch. Thus, an estimated total of approximately 92.32 mgd would be conveyed to supply the MDWS for users in Upcountry Maui and the agricultural fields in Central Maui. However, please note that Table 2-1 has been added to Section 2.1.2 of the Final EIS to summarize the total amount of surface water that could be made available from the East Maui streams prior to system losses that take place within the Mahi Pono field irrigation system in Central Maui. See page 2-12 of the Final EIS.

As for the timing of the diversion of the water, as discussed in Section 2.1.5 of the EIS, after the Final EIS is published and accepted by the BLNR, the State of Hawai‘i will conduct appraisals of the water from the License Area, produce lease agreements and a watershed management plan (refer to Section 2.1). Once this is complete the Water Lease will be put to public auction. Once the Water Lease is issued by the BLNR, under the Proposed Action, Mahi Pono can more fully implement its proposed farm plan. Moreover, it is estimated that 10 years will be required for Mahi Pono and lessees to remove volunteer sugarcane and weeds from the approximate 30,000

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acres, amend soils, install field improvements, build warehouses and other structures, and plant crops. The predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years (Plasch, 2019). Hence, even under the Proposed Action, the amount of water diverted at any given time will be only what is needed to meet the needs of the authorized users, for example MDWS for Upcountry Maui, and Mahi Pono's agricultural operations in Central Maui. Please note that this statement has been added throughout the Final EIS as applicable as shown on pages xxii, 2-11, and 4-62.

Comment 18: *Notably, the DEIS acknowledges on page 8-1 that the content and parameters of a watershed management plan between the lessee and the DLNR is yet to be resolved. The key components needed to finalize the Water Lease, including its terms, have still not been completed.*

Response 18: You are correct. Page 8-1 of the Draft EIS, which is in within the Chapter noted as "Unresolved Issues", identified the contents and parameters of the watershed management plan as unresolved. However, page 8-1 of the Draft EIS also noted that the watershed management plan would be resolved before BLNR could issue the Water Lease. Section 2.1 of the Draft EIS contains a more robust discussion about the requirements of a watershed management plan and the BLNR's actions in that regard as of the time of the preparation of the Draft EIS, which was published on September 8, 2019. However, Section 2.1 of the EIS has been supplemented to discuss the BLNR's actions of October 11, 2019, where the BLNR approved the minimum content requirements for a watershed management plan. A copy of the BLNR-approved DLNR report is enclosed as Appendix O-1 in the Final EIS. The components of an acceptable watershed management plan and related information based upon the BLNR action of October 11, 2019 have been added to Section 2.1 of the Final EIS, as provided on pages 2-2 to 2-4. The BLNR delegated authority to the DLNR staff to jointly develop watershed management plans with water lessees to ensure that the watershed management plan aligns with the goals of watershed protection to maintain watershed function and water yield and to restore or maintain a certain level of biological integrity that is the foundation of a healthy watershed.

Comment 19: *One would think that one of the most essential terms to the Water Lease would be the amount of water proposed to be diverted and which specific areas those diversions would include. The DEIS discloses no proposed diversion amounts from individual stream sources and how those proposed amounts would impact the surrounding environment. The Water Lease should not be issued until all of the essential facts allowing for its implementation are revealed and subject to public opinion. Anything less would circumvent the very process of calling for an EIS.*

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Response 19: The amount of water proposed for diversion from the License Area is noted in numerous sections of the EIS. The maximum amount of water proposed for diversion through the Water Lease is estimated as 87.95 mgd, after the IIFS is met, as described in Section 2.1.2 of the Draft EIS. See also Response #17. Regarding individual diversions from specific streams, as discussed in Response #15 and Response #16, what is important with respect to stream protection is the amount of water flowing in the streams, not measurement of the amount of water being diverted. The Water Lease diversions will come from the streams that were not ordered for Full Restoration under the CWRM D&O. See Table 1-3 of the Final EIS, identifying the areas of the various streams and which streams were ordered for Full Restoration. Note that Table 1-3 has been revised in the Final EIS to provide more clarity and be more consistent with the CWRM D&O as shown on pages 1-19 to 1-22. Figure 1-3 of the EIS also depicts the License Area streams and the applicable status of such streams. Note that the legend of Figure 1-3 has been revised to change the legend nomenclature from "Non-IIFS Streams" to "Non-Petitioned Streams" as shown on page 1-23 of the Final EIS.

All appropriate disclosures have been made in the EIS, and the EIS process has been subject to extensive public review. We similarly expect that the Water Lease process, as a public auction, will involve a public process, consistent with HRS § 171-58.

Comment 20: *While Trutta Environmental Solutions, LLC ("Trutta") was contracted to develop a Hawaiian Stream Habitat Evaluation Procedure ("HSHEP") model to assess impacts of surface water diversion, including instream habitat from constriction or diversion of stream flow, creation of barriers to stream animal upstream movement and entrainment of downstream drifting larvae in 33 streams, the model falls short by failing to: (1) quantify the amount of water currently being diverted; (2) identify the amount of water that will be diverted under the Proposed Action; (3) identify specific diversion locations to be used under the Proposed Action; and (4) quantify the impact any modification or action of those diversion locations would pose to native species and the significant cultural implications occurring as a result of limiting the ability to access certain diversion locations while availability of native species at and around those access points would be limited.*

Response 20: Please note that the HSHEP model does in fact (1) quantify the amount of water currently being diverted; (2) identify the amount of water that will be diverted under the Proposed Action; (3) identify specific diversion locations to be used under the Proposed Action; and (4) quantify the impact any modification or action of those diversion locations would pose to available habitat units for native species. This data and the analysis is presented in the appendices of the "Assessment of The Environmental Impacts of Stream Diversions on 33 East Maui Streams Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model" report conducted by Trutta Environmental Solutions, LLC as it relates to stream habitat, which is included as Appendix A to the EIS. However, please note that the appendices of the subject

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report were inadvertently left out of the Draft EIS but have been included in the Final EIS, and the report has been revised for further clarification.

Your comment regarding the cultural implications occurring as a result of limiting access to certain diversion locations is unclear. Please note that the CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui as noted in Section 1.3.4 of the Draft EIS. Moreover, based on comments submitted in response to the Draft EIS, Cultural Surveys Hawai'i (CSH) conducted additional consultation after the publication of the Draft EIS, and the updated CIA and EIS identify impacts to the regional environment, taro farming, and freshwater resources within the License Area based public documentation and consultation with the community as presented in Section 4.6 of the EIS.

With regards to access in the License Area, as discussed in Section 4.8 of the Draft EIS, public access to the License Area is currently limited to permitted access by hunting groups and hiking clubs and individuals. Access to the Ko'olau Forest Reserve Hunting Units, which include the Huelo, Honomanū, Ke'anae, and Nāhiku portions of the License Area, is managed by the Department of Land and Natural Resources (DLNR) Division of Forestry and Wildlife. In order to hunt in these areas, hunters must first obtain a license from the DLNR and an EMI Permit/Waiver. Access to the hunting units is managed by EMI through eight existing access roads. Hunters are permitted to enter the areas by vehicle but must traverse most areas by foot. Hiking is also a permitted recreational use within the License Area and is limited to hiking clubs. Hiking access requires a Hiking Waiver from EMI. As it relates to access into the License Area for cultural purposes, EMI has never denied anyone access for cultural purposes.

It should be noted that access to the License Area is limited for the safety of entrants. For hunters, hunting grounds are limited to one hunting party per hunting area, as regulated by the DLNR. The hiking groups that currently access the License Area, Sierra Club Maui Group and Mauna Ala Hiking Club, enter the License Area by foot and are guided by a club hiking expert with a manageable number of people.

Please note that Section 4.6 of the Final EIS has been updated to include a discussion as it relates to access into the License Area for cultural and traditional practices as shown in pages 4-171 to 4-252. The recommended mitigation measures relate to access were prepared in consideration of feedback to CSH from Mr. Ferreira and Mr. Tanaka of OHA recommending that the EIS should consider an array of approaches to mitigate potential impacts on practitioner access and use of the License Area, such as the maintenance of a consultation list of willing practitioners that can be used to communicate with and accommodate these individuals and developing an established procedure for cultural access.

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CSH recommends that the access policy for the License Area include access by cultural practitioners via a similar process in use for hiking groups and developed in consultation with the landowner (the State) and the Water Lease lessee and in consideration of applicable law related to traditional and customary Native Hawaiian rights.

Comment 21: *The DEIS fails to address key concerns surrounding the diversion of water. Indeed, one of the specifics within the 2018 IIFS that was applied to the HSHEP model was that "[t]he IIFS are the estimated 64% of median base flows (BFQ50), also known as (H90) flows, for stream restoration, and the numbers are only estimates, to eventually be confirmed by actual flows from which the H90 can be established." (HSHEP at p. 57; emphasis added). Reliance on calculations not confirmed by an actual measurement of flows at each individual stream is a flawed approach and must be reevaluated after the appropriate measurements are taken.*

Response 21: As discussed in Response #16, the use of statistical regression estimates for discharge values (BFQ₅₀) is not a flawed approach. The streamflow estimates are based on the regression relationships published by the USGS in:

Gingerich, S.B., 2005, Median and Low-Flow Characteristics for Streams under Natural and Diverted Conditions, Northeast Maui, Hawaii: Honolulu, HI, U.S. Geological Survey, Scientific Investigations Report 2004-5262, 72 p.

The use of statistical regression estimate is a method to produce consistent estimates of streamflow at ungauged locations. While verifying the baseflow metric with field data is preferable, it will take years to create accurate baseflow values for every stream and tributary in the License Area. If some type of statistical relationship between known gauge sites and ungauged sites was not applied, there would be no way to identify the streamflows that the HSHEP model used to estimate the number of habitat units at most diversion locations

Comment 22: *We also insisted that the EIS disclose the following information for each alternative analyzed:*

- *The amount of water proposed to be taken from each stream daily (on average and at minimum and maximum);*
- *The amount of water proposed to be taken from each license area daily (on average and at minimum and maximum);*
- *The total amount of water proposed to be taken from the entire license areas daily (on average and at minimum and maximum).*

Response 22: As discussed in Response #16 above, it is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis, and it is unclear what value such information would add in terms of determining proper stream and

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environmental protections. In terms of environmental considerations, as discussed in Response #15, what is important is the amount of water remaining in a stream, not how much water is being taken from a particular stream (or portion of the License Area). Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams proved to be entirely impractical due to the flashy nature of the streams, which caused the gauges to wash away. The total amount of water taken from the License Area is measured, with readings at the Honopou boundary of the License Area.

Regarding the total of water estimated to be available for diversion daily from the License Area, this is described in Section 2.1.2 of the EIS:

With the issuance of the Water Lease under the Proposed Action, the EMI Aqueduct System would divert only the maximum allowable amount under the CWRM D&O from streams within the License Area, which is estimated to be approximately 87.95 mgd. The EMI Aqueduct System is estimated to divert an additional 4.37 mgd from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Maliko Gulch. Thus, an estimated total of approximately 92.32 mgd would be conveyed to supply the MDWS for users in Upcountry Maui, Nāhiku, and the agricultural fields in Central Maui.

Hence, approximately 87.95 mgd of stream surface water is estimated to be available for diversion from the License Area under the Proposed Action.

Regarding your third bullet point comment about minimum and maximum daily flows, it is unclear what significance that information is to environmental impacts. As stated in other responses, water will be left flowing in the streams to comply with the CWRM D&O. Nevertheless, although we cannot project that information for future flows under the proposed Water Lease, we can provide historical information about minimum and maximum daily flows in the past. For example, up until 2006, when the long-term average delivery by the EMI Aqueduct System was 165 mgd, the minimum ditch flow experienced was approximately 10 mgd and the highest flow was the capacity of the EMI Aqueduct System (some 400 mgd).

Comment 23: *Given that there is no disclosure on possible diversion amounts for the Proposed Action, the DEIS further fails to address these concerns over each alternative. Without knowing how much water is proposed to be diverted from each stream, each individual license area, and the entire license areas taken together as a whole, it is impossible to run accurate scenarios on the impacts those diversions would pose.*

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Response 23: Regarding your comment that there is no disclosure on possible diversion amounts for the Proposed Action, please note that as discussed in Response #22 above that it is assumed that approximately 87.95 mgd on average will be available for diversion from the License Area after compliance with the CWRM D&O. It is estimated that an additional 4.37 mgd can be diverted from the private lands immediately to the west of the License Area. Hence approximately a total of 92.32 mgd of stream surface water is estimated to be available for diversion under the Proposed Action.

We respectfully disagree with your comment that the Draft EIS fails to address these concerns over each alternative. In terms of amounts of water diverted, Chapter 3 of the EIS presents the analysis of two lesser water scenarios, identified as the Reduced Water Volume alternative and the No Action alternative. The Reduced Water Volume alternative analyzes impacts from diversions in amounts less than as presented for the Proposed Action, but more than what would be diverted under the No Action / No Water Lease scenario. Under the No Action alternative, a total of approximately 30.76 mgd would be diverted (with approximately 26.39 mgd of that total coming from the portion of the Collection Area east of Honopou stream). Section 3.4 of the Draft EIS then evaluates and compares each reasonable alternative against several environmental factors. Table 3-2 has been added to the Final EIS so that readers can compare the varying environmental effects of the alternatives and the Proposed Action. See pages 3-49 to 3-80 of the Final EIS.

Regarding your comment that it is impossible to run accurate scenarios without knowing how much water is proposed to be diverted from each stream, each individual license area, and the entire license areas taken together as a whole, please note that what is important when assessing stream/environmental impacts is not how much water is diverted from the streams, but how much water remains in the streams. Further, as discussed in Response #15 above, it is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. For the purposes of the EIS diversion number readings were used at Honopou Stream (end of the License Area) and Māliko Gulch. Please see Response #15 for additional discussion on this topic.

Comment 24: *The DEIS Fails to Address Concerns Over Access to Culturally Important Areas. We have also requested in our early comments and comments on the EISPN that the EIS provide the following:*

- *Maps indicating all maintenance and/or access roads for the diversion system including identification of all access points at public roads and/or highways;*

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- *Maps that show every single stream within East Maui, including all tributaries from mauka to makai, identified by name; and*

Response 24: Regarding maps depicting access roads and trails, Section 4.5 of the Final EIS, as well as Appendix E (Archaeological Literature Review and Field Inspection for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas) have been revised to include the current inventory of roads and trails in the License Area. CSH completed a geographic analysis of trails and roads that appear on maps of the License Area. This analysis is limited to trails and roads that were depicted on maps between 1869 and 1992 and available to the public domain. This analysis is also limited to only the roads or trails that extend within the License Area. Section 4.5 of the Final EIS has been updated to include a further discussion regarding these maintenance and access roads, and access points. See pages 4-147 to 4-149, together with Figure 4-39, which has been added to the Final EIS to correspond with the above text (Figure 48 in Appendix D and Figure 4-39 in the Final EIS).

Regarding maps depicting streams and tributaries in East Maui, please note that Figure 1-1 of the Draft EIS shows all of the streams recognized by the CWRM that are or could be diverted by the EMI Aqueduct System. Section 1.3.1 of the Draft EIS explains that:

Figure 1-1 illustrates the EMI Aqueduct System overlaid on the Department of Land and Natural Resources (DLNR) Division of Aquatic Resources (DAR) geographic information system (GIS) data obtained from the State Office of Planning’s GIS download portal. An electronic drawing of the EMI Aqueduct System was georeferenced by Akinaka & Associates, Ltd. (Akinaka) to depict major diversions on East Maui streams shown on a United States Geological Survey (USGS) base layer map obtained from ESRI. Due to the complexity of the EMI Aqueduct System and the level of detail shown on the map, not all of the minor diversions could be associated with a stream or tributary. The stream names shown are from the DAR GIS database but a few of those stream names may differ from how some East Maui residents may refer to them. Moreover, certain streams that were identified during certain proceedings before the Commission on Water Resources Management (CWRM) do not have associated GIS data and therefore could not be precisely located on the map.

Hence, some of the streams could not be depicted as there is not data to depict them.

Comment 25: *HAR § 11-200-17(e)(1) provides that the DEIS should include detailed topographical and regional maps. While the DEIS does provide an array of maps, none of them address the concerns indicated in our comments above and are devoid of showing and/or identifying diversion systems as they are located next to access areas. This information is critical*

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as it relates to the accessibility of areas significant to the traditional and customary practices of gathering, farming, fishing, etc., along streams and streambeds potentially impacted by the Proposed Action. The DEIS fails to address accessibility issues. The EIS should identify the location of access points within the License Area and whether or not those access points will be impacted stream diversion. The EIS should also disclose whether use of access roads or pathways associated with maintenance of the EMI system will be restricted under the Proposed Action and identify those locations accordingly.

Response 25: As discussed in Response #24 above, maps depicting access roads and trails have been added to the EIS and Section 4.5 of the Final EIS, as well as Appendix E (Archaeological Literature Review and Field Inspection for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas), have been revised to include the current inventory of roads and trails in the License Area as shown on pages 4-147 to 4-148. CSH completed a geographic analysis of trails and roads that appear on maps of the License Area. This analysis is limited to trails and roads that were depicted on maps between 1869 and 1992 and available to the public domain. This analysis is also limited to only the roads or trails that extend within the License Area. Please see Response #24 for a more complete discussion about the maps and trails.

Regarding your comment about the Draft EIS failing to address accessibility issues, please note that Section 4.8 of the Draft EIS discusses access into the License Area as it relates to recreational activities. Specifically, Section 4.8 of the Draft EIS states:

The Ko‘olau Forest Reserve Hunting Unit encompasses portions of Huelo, Honomanū and Ke‘anae Nāhiku within the License Area (See Figure 4-38). The Hunting Unit is administered the DLNR, Division of Forestry and Wildlife. To hunt within the License Area, hunters must obtain a license from the DLNR and an EMI Permit / Waiver. Hunting grounds are limited to one hunting party per hunting area, as regulated by the DLNR. Hunters enter the hunting unit every Saturday and Sunday, as well as holidays observed by EMI. Prior to entering, hunting parties must sign in with the license number obtained from the DLNR, and upon exiting must log in any game that are taken. Access to the hunting grounds is managed by EMI through eight existing EMI access roads. Hunting is permitted year round. Hunting parties may enter the License Area by vehicular access, however, must traverse by foot in most areas.

Hiking is also a permitted recreational use within the License Area and is limited to hiking clubs. Access to the License Area for hiking is acquired through a Hiking Waiver from EMI. Only two hiking clubs currently enter the License Area lands approximately four to six times a year; the Sierra Club Maui Group and Mauna

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Ala Hiking Club. They enter on foot, and are guided by a club hiking expert with a manageable number of people.

Other recreational uses are not permitted on the License Area for safety reasons, but trespassing and unpermitted access for hiking, gathering, and illegal hunting does occur on State lands.

However, Section 4.8 has been revised in the Final EIS to include more recreational resources within the subject regions of interest and to include an expanded discussion of access regarding recreational activities within the License Area as shown on pages 4-305 to 4-309.

Moreover, as discussed in Response #9 above, the CIA and Section 4.6 have been updated in the Final EIS to include a discussion regarding access by cultural practitioners as shown on pages 4-248 to 4-251.

Regarding your comment about whether access points into the License Area would be impacted by the stream diversions, please note that under the Proposed Action that EMI would continue to maintain and repair many of the existing access roads and trails a part of the EMI Aqueduct System, many of which are used by the public.

Regarding public access, we also direct you to Section 3.2.2.2 of the Draft EIS, describing a Modified Lease Area alternative, the comparative evaluation of which is provided in Section 3.4. Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, it is assumed under this alternative that public access to and uses within the State-owned land that is outside of a smaller License Area would be managed by a State agency (presumably,

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the Division of Fish and Wildlife (DOFAW)) and the areas managed by EMI would be significantly less than it has in the past. DOFAW has not indicated how it intends to regulate those lands. Should there be greater public access to the License Area than currently exists, pursuant to the analysis in Section 3.2.2.2 of the EIS and Appendix C, it is anticipated that there may be an increased introduction or spreading of invasive species within these areas. Furthermore, the discussion of the Modified Lease Area alternative has been expanded to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding impacts to the areas that would allow for more public access as shown on pages 3-21 to 3-24.

Comment 26: *The DEIS Fails to Adequately Consider Alternative Water Sources* We have also raised the following concerns in our previous comments:

- *Alternative proposed uses including one that involves the use of water from less than all four license areas and no diversion of water from East Maui.*

HAR § 11-200-17(f)(2) states the DEIS should list proposed alternative uses which could attain the objections of the action and to explain in sufficient detail why those alternatives were rejected. Despite the concern raised above in 2016, A&B has not adequately considered the possibility of seeking water sources other than diverting water from the subject license areas in order to attain the objectives of the Proposed Action.

Response 26: We respectfully disagree with your comment that A&B has not adequately considered the possibility of seeking water sources other than diverting water from the License Area. Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a No Action alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that could have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects, and therefore those alternatives were discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for reasons discussed in Chapter 3.

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Moreover, Chapter 3 has been supplemented in the Final EIS to include further discussion of alternatives that were previously deemed infeasible, and to provide a comparative evaluation table of alternatives, in the interest of greater clarity. See pages 3-49 to 3-80 of the Final EIS.

Comment 27: The DEIS Fails to Satisfy Ka Pa'akai. *The DEIS acknowledges Ka Pa'akai but misapplies it by improperly deferring key disclosures required by that precedent to an unknown time. Through its own Ka Pa'akai analysis, the DEIS admits that the inquiry does not end once the valued cultural, archaeological, and historical resources have been identified' Accordingly, "the second and third prongs of the Ka Pa'akai analysis require the agency to determine how any of the resources may be impacted by the proposed action, and what, if any, feasible measures can be taken to protect the resources." CIA at 393.*

FOOTNOTE 1:

A note to HAR 11-200-12 states:

Act 50, Session Laws of Hawai`i 2000, amended the definition of "significant effect" in HRS Section 343- 2to mean "the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic [or] welfare, social welfare[.], or cultural practices of the community and State."

Act 50 also amended the definition of "environmental impact statement" or "statement" in HRS Section 343-2 to include the disclosure of effects of a proposed action on cultural practices, as follows:

"environmental impact statement" or "statement" means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic [and] welfare social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

(emphasis in original).

Rather than addressing the second and third prongs of the analysis, there is a generic

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*assumption that application of the IIFS decision has the "potential to reduce or eliminate" the proposed cultural impact and therefore no further recommendation is needed as to the implementation of feasible protective measures. Most importantly, the recommendations given push a more detailed assessment to be provided in the future by a "qualified professional." Providing a detailed assessment **in the future** rather than submitting a detailed assessment with the DEIS fails to satisfy Ka Pa'akai because plans to reasonably protect cultural resources are clearly erroneous if they are only conceptual in form. It also conflicts with the very definition of an EIS, by depriving the BLNR of the environmental impact studies and alternatives analysis necessary for its informed decision-making.*

FOOTNOTE 2:

HAR 11-200-14 provides:

... the EIS process involves more than the preparation of a document; it involves the entire process of research, discussion, preparation of a statement, and review. The EIS process shall involve at a minimum: identifying environmental concerns, obtaining various relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts. An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies shall ensure that statements are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action.

(emphasis added).

Response 27: It is noted that while this EIS is intended to provide information to the agency, it is not intended to be the sole *Ka Pa'akai* analysis. The EIS is a disclosure document and the Applicant is not required to perform the *Ka Pa'akai* analysis. That responsibility lies with the State and county agencies of the State of Hawai'i. Nevertheless, consistent with the requirements under HRS Chapter 343 and Act 50 (2000) the EIS includes an assessment of effects on the cultural practices through the Cultural Impact Assessment for the Nāhiku, Ke'anae, Honomanū and Huelo License Areas provided as Appendix F. Within that assessment provided in the CIA there is an analysis of the *Ka Pa'akai* factors.

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The Applicant acknowledges that with respect to recommendations to protect native Hawaiian cultural resources and practices, the CIA included in the Draft EIS recommended, based upon community consultation, that additional studies be performed and also concluded that that implementation of the CWRM D&O would mitigate the impacts of the Proposed Action given that the CWRM D&O called for full restoration of streams identified as valuable for taro cultivation and full or partial restoration for several other streams in the License Area to protect stream habitat. As explained in Section 7.5.3 of the updated CIA:

The CIA included in the DEIS described potential impacts to the regional environment, taro farming, freshwater ecosystems, and cultural sites. For impacts to the regional environment, taro farming, and freshwater ecosystems, the CIA deferred to other qualified professionals to offer recommendations for mitigation. This updated CIA includes discussion of two additional impacts (access by cultural practitioners and climate change) as well as the mitigation recommendations that have been provided by qualified professionals within the technical studies prepared for the EIS. These studies include the field surveys and habitat modeling conducted by Trutta Environmental Solutions, Inc., the terrestrial flora and fauna study prepared by SWCA Environmental Consultants, and the social impact assessment prepared by Earthplan. Mitigation recommendations also include pertinent information from the CWRM D&O for impacts to taro farming. For those impacts falling within CSH subject matter expertise, CSH offers specific recommendations based upon community consultation, technical knowledge, and relevant research. The mitigation provided in this CIA has the potential to mitigate cultural impacts of the Proposed Action.

In response to comments received on the Draft EIS, Cultural Surveys Hawai‘i (CSH), the consultant who prepared the CIA, reviewed those studies and provides additional analysis included in the Final EIS. Contrary to your comment that BLNR would be deprived of the studies needed for informed decision making, the Draft EIS included a full range of environmental studies that assessed impacts and offered suggested mitigation measures in the event the Water Lease is issued. In light of the numerous technical studies prepared for the EIS, and the related analysis of not only the Proposed Action, but the relevant alternatives, which differ from the water diversions permitted under the CWRM D&O, we cannot agree with your assertion that the EIS relied exclusively on findings and conclusions from CWRM, or that the EIS conflicts with the requirements under HAR § 11-200-14.

With respect to the CIA, as fully documented in the CIA, CSH made extensive efforts to engage in consultation, starting in 2017. CSH conducted two separate rounds of community consultation. The first round of community consultation was conducted during the preparation of the Draft EIS. CSH contacted approximately 150 parties. CIA Table 12 (Community Contact Table) documents CSH's extensive efforts of community outreach and follow-up attempts.

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Despite these repeated efforts, only 20 people/agencies responded. In an effort to gather as much information as possible, CSH then turned to the declarations that had been filed by participants in the CWRM proceedings that began in 2001 and concluded in June 2018, as those proceedings addressed 24 of the 36 streams within the License Area that are diverted by the EMI Aqueduct System. The declarations relied on by CSH were made by cultural practitioners, an expert witness, and Nā Moku Aupuni o Ko‘olau, a community of taro farmers, fishermen, and hunters who participated in that extensive process. Following public review of and comment on the Draft EIS, CSH conducted a second round of consultation. This consultation was targeted to those who had provided comments on the Draft EIS and raised specific issues of a cultural impact nature. No additional cultural resources or practices, or details regarding specific areas where access is needed, for specific cultural practices, or to specific cultural sites, were identified during consultation.

The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action. See pages 4-239 to 4-252 of the Final EIS for the revisions to Section 4.6.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM, and recommended by CSH.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

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Comment 28: *Relying exclusively on a sister agency like the CWRM and post-dating a more detailed assessment addressing listed and recognized cultural impacts is the very definition of conceptual and goes against the entire purpose of submitting an EIS in the first place. It also contravenes a prior court order in related litigation that explicitly prohibits BLNR from "merely rubberstamping every CWRM determination." Na Moku Aupuni O Ko 'olau Hui and Maui Tomorrow v. BLNR, Civ. No. 03-1-0289-02 (ICC Order filed Oct. 10, 2003 (hereafter, "Hifo Order")).*

Response 28: With regard to the potential effects of the Proposed Action on traditional and customary practices, as discussed in the *Ka Pa`akai* decision, we acknowledge that BLNR will be required to "to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *Ka Pa`akai* at, 94 Hawai`i at 35, 7 P. 3d at 1072. BLNR has confirmed that in its Findings of Fact, Conclusions of Law, and Decision and Order filed on March 23, 2007 in the contested case proceeding that is still pending regarding issuance of the proposed Water Lease (the 2007 D&O) as follows:

Public trust principles require that adequate provision be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture and navigation.

2007 D&O COL No. 6 at page 41 (*citing In Re Water Use Permit Applications*, 94 Hawai`i 97, 9 P. 3d 409 (2000)). CWRM, in its June 20, 2018 D&O, also recited the State's constitutional obligation to consider the impacts of stream diversions in East Maui on traditional and customary practices of Native Hawaiians at pages 242 through 245, including the Supreme Court of Hawai`i's more recent holding on this subject in *State v. Pratt*, 127 Hawai`i 206, 277 P. 3d 300 (2012).

In order to facilitate BLNR's compliance with this obligation, the EIS discussed cultural resources and practices, and the impacts to cultural resources and practices, in section 3.4.10 and in 4.6. The EIS also includes a comprehensive CIA prepared by CSH. As noted in Response #27, the CIA now includes information from a second round of consultation, which was done in response to comments submitted on the Draft EIS. We believe that the EIS (including Appendix F) together with the CWRM D&O, provide ample information for the BLNR to consider regarding potential impacts to traditional and customary practices, and that information will enable BLNR, at the point in the future that it is deliberating on the Water Lease, to fulfill its constitutional obligation "to protect the reasonable exercise of customarily and traditionally

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exercised rights of Hawaiians to the extent feasible.” *Ka Pa‘akai* at, 94 Hawai‘i at 35, 7 P. 3d at 1072.

Importantly, to the extent that the CIA identified concerns of taro farmers regarding adequate water for their taro cultivation, please note that the CWRM D&O provided for full restoration of flow to the streams in the License Area (streams which NHLC's clients had identified to CWRM to be taro growing areas). Your comment does not explain how or why the full restoration of flow to these streams does not address the concerns identified in the CIA.

Comment 29: *While there is an extensive list of Traditional Cultural Practices (hereafter, "TCP") impacted by the Proposed Action and what streams are associated with those practices, the DEIS and the Cultural Impact Assessment ("CIA," attached as Appendix F) fail to provide any meaningful assessment since there is a lack of disclosure as to the amount of water to be taken from each stream. See CIA at 352-72, Tables 13 and 14.*

For example, the discussion on (a) the role of fresh water providing for the ecosystem vital to perpetuating the life of marine foods important to residents and (b) the historic use of kaka and kakaula fishing methods suggests a recognition of the community's reliance on continued fishing and other marine life gathering. CIA at 391-92. The DEIS provides a table of these gathering practices. CIA at 352-71, Table 13. However, without a richer and more detailed revelation of a scientific assessment of impacts from past, current and future diversions from the streams identified, BLNR cannot evaluate the quantitative consequences on any affected TCP along stream segments, or in stream mouth ecosystems within the watershed. Environmental disclosures for each of these specific micro-environments is crucial to a complete analysis of TCP impacts and reasonable protective measures specific to those practice locations.

Response 29: Regarding your comment about the community's reliance on fishing and gathering, the CIA identified practices including fishing, gathering of rocks for traditional food preparation, and knowledge of, or access to, cultural sites, including but not limited to cultural sites in the A&B/Mahi Pono agricultural fields of Hāmākua Poko and Hāmākua Loa, a legendary pōhaku in Wahinepe‘e, and Papanene Heiau as discussed in Section 4.5 and Section 4.6 of the EIS.

In response to your assertion that the Draft EIS does not "*provide any meaningful assessment since there is a lack of disclosure as to the amount of water to be taken from each stream,*" as discussed in Response #15, EMI has gauges located in several locations across the License Area. These gauges measure the flow in the ditches only. It is not feasible to measure flow in the streams, as there are limited areas that contain the necessary control points to accurately measure streamflow. Similarly, it is not feasible to provide total diversion amounts within only a

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particular portion of the License Area, i.e., diversion amounts only from Huelo, diversion amounts only from Nāhiku, etc. The USGS used to have gauges at each of the License Area boundaries, but due to USGS cost cutting, several of those gauges were removed. It is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. In addition, proper gauging would involve some form of stream alternation. EMI has never conducted stream gauging as that lays within the expertise the CWRM and the USGS. As noted in the CWRM D&O, the measurements EMI take are at Honopou Stream and Maliko Gulch, however, for the purpose of measuring the aggregate flow from entire License Area, the Honopou Stream measurement reading was used.

Moreover, the HSHEP model is a spatially-referenced model that includes all diversions and stream segments within the License Area. The overall summaries of stream results are derived from the impacts on stream segments above and below all major and minor stream diversions associated with the stream. The results from the HSHEP model actually provide the watershed analysis you assert is missing from the EIS. Please refer to Appendix A of the EIS for more details regarding the HSHEP model and analysis.

For purposes of determining impacts to environmental and cultural resources, it would seem that the relevant inquiry is the amount of water to be left in the streams. The CWRM D&O established the minimum IIFS for most of the streams within the License Area. The HSHEP model provides an analysis of the impacts of varying amounts of water within all of the License Area streams to stream habitats and native amphidromous species.

Your comment regarding impacts of past, current and future diversions and BLNR's ability to conduct a quantitative review of impacts to traditional and customary practices is unclear. However, as discussed in Response #7 above, we acknowledge that an EIS must consider cumulative impacts, which means "the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions." HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically feasible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and

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stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas (Appendix E), which has been further supplemented to include information on the legendary Pōhaku in Wahinepe‘e, archeological resources in Central Maui, climate change impacts on cultural and historical resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments fielded during the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. The Assessment of the Environmental Impact of Stream Diversions on 33 East Maui Streams Using the Hawaiian Stream Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System. As it relates to the human environment, the Cultural Impact Assessment for the Nāhiku, Ke‘anae, Honomanū and Huelo License Areas (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been updated to address comments received on the Draft EIS and post-Draft EIS consultation. The A&B Proposed Water Lease for the Nāhiku, Ke‘anae, Huelo, and Honomanū Social Impact Assessment (Appendix G) documents community outreach with various stakeholders in a context for understanding the current and historical perceptions of diverting East Maui stream water, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century and have shaped the existing environmental conditions described in Chapter 4, albeit to a lesser extent than in the past due to the reduction in stream diversions that could be allowed under the Proposed Action. Please note that Section 4.17 of the Final EIS has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

Specifically, with regards to scientific assessment of impacts from past, with respect to the HSHEP model, there is no data for pre-diversion conditions because there is no data prior to 1960 in the State Division of Aquatic Resources Database associated with stream surveys. The surveys from the 1960s were conducted by the State of Hawai‘i Department of Fish and Game, but even these are far after many diversions were in place across the State. Thus, it is not scientifically possible to provide an assessment of impacts that took place prior to 1960.

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Regarding your comment about disclosures of each of the micro-environments, please note that this is not feasible to analyze within an area of 33,000 acres that consist of several different types of habitats as discussed in Section 4.4.1 of the Draft EIS. Specifically, Section 4.4.1 of the Draft EIS states:

SWCA's survey found that the License Area comprises primarily open and closed 'ōhi'a (Metrosideros polymorpha) forest. This type of vegetation accounts for over 60% of the vegetation in the surveyed areas of East Maui. Open 'ōhi'a forests tended to have native species such as 'ōhi'a, pāpala kēpau (Pisonia grandis), and lalalapa (Cheirodendron trigynum) co-dominating with invasive species such as African tulip tree (Spathodea campanulata) and Formosa koa (Acacia confusa). The midstory was often a co-dominant mixture of native and non-native as well, with natives such as hāpu'u fern (Cibotium sp.) and koa (Acacia koa) blending with invasive species such as shoebutton ardisia, mule's foot fern (Angiopteris invecta), and strawberry guava. The understory frequently consisted of uluhe with a mixture of non-native herbaceous species along the margins, including glorybush (Tibouchina herbacea), white ginger (Hedychium coronarium), Koster's curse, Spanish needle, and Job's tears.

Non-native (Alien) Forest accounts for 23% of the vegetation in the License Area and includes Eucalyptus, Casuarine, Falcataria, Araucaria, Fraxinus, Melaleuca, Psidium, and Grevillea spp. Paperbark (Melaleuca quinquenervia) and eucalyptus (Eucalyptus spp.), likely introduced as forestry species, were found during the ground surveys to be the predominant overstory species in this vegetation type. Shoe button ardisia (Ardisia elliptica) and strawberry guava (Psidium cattleianum) were common throughout the midstory, and understory species included a variety of non-native grass species such as basket grass (Oplismenus hirtellus spp. Hirtellus), Job's tears (Coix lachrymal-jobi), and bristly foxtail (Setaria verticillata), in addition to herbaceous species such as Koster's curse (Clidemia hirta), Spanish needle (Bidens pilosa), and tick trefoil (Desmodium triflorum). 'Ie'ie (Freycinetia arborea), a native liana, and laua'e haole (Phlebodium aureum), a non-native epiphytic fern, can occasionally be seen twining through the midstory in this vegetation type.

Uluhe-dominated slopes were seen on ground surveys occurring adjacent to 'ōhi'a forest on relatively steep slopes up and downhill from access roads. These areas were characterized by a generally monotypic understory layer of uluhe with the sporadic presence of native shrubs and trees, including 'ōhi'a, pāpala, kēpau, and lalalapa, but also the less commonly seen native species 'ōhā wai nui (Clermontia arborescens spp. waihia).

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*Wet cliff areas are less likely to be impacted by feral pigs and human activities due to their steepness, and thus are more likely to contain threatened or endangered plant species. However, no threatened, endangered, or candidate plants were seen in these areas during the ground surveys, but some less-commonly seen species were noted, including a *Cyrtandra* species (likely *Cyrtandra grayi*), and 'ōhā wai nui. Fern species tend to dominate these areas, most notably *Cyclosorus parasiticus*. *Machaerina*, a native sedge, was also frequently seen.*

With regards to impacts, the Proposed Action is not anticipated to alter each vegetation cover type currently present within the License Area. As such, those areas would remain substantially the same.

With regard to stream environments, the HSEHP quantified how various man-made changes affect Native Hawaiian amphidromous stream animals based on Statewide observations of these animals' distribution and habitat as discussed in Section 4.2.1 of the Draft EIS. The HSEHP mode concluded that the Proposed Action would have a negative impact by reducing native stream animal habitats by approximately 40% that is estimated to be available under natural flow conditions with no diversions.

Hence, a feasible analysis was conducted that had a regional approach when assessing the impacts of the Proposed Action on the above environmental factors.

Comment 30: *The CIA acknowledges the community residents who rely on both stream life (o'opu, `opae, and hihiwai) and marine life food sources, all of which rely on the steady flow of fresh water in streams flowing from the mountains to the ocean. CIA at 352-54, 359, 388-89, 392. It acknowledges witnesses who attest to declines in stream life, marine life, and the health of various fish species and populations. Id. In general, historic stream gathering of `opae from mauka to Makai, now apparently restricted to the upper reaches of streams due to the availability of cooler water now only in "mountain areas" where stream flows still remain abundant. CIA at 392 (citing to expert Skippy Hau). However, once again, the DEIS is devoid of watershed specific analysis of the impacts of specific diversions in each stream, depriving the reader of any appreciation for the impacts these specific diversions are having on any particular stream watershed. Without location information on diversions, or a scientific assessment on each affected watershed, the BLNR as a regulator would not be able to fashion reasonable protective measures specific to those affected stream stretches affected by specific diversions.*

Response 30: You are correct that the CIA participants and several of the declarations used described observations detailing declines in stream life, marine life, and the health of the

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watershed. Following public review of and comment on the Draft EIS, CSH conducted a second round of consultation which was targeted to those who had provided comments on the Draft EIS and raised specific issues of a cultural impact nature.

Section 4.6 of the Final EIS has been updated as shown on pages 4-171 to 4-239 enclosed with information relating to the additional consultation dealing with stream life, marine life, and the health of the watershed. Regarding gathering of 'opae, it is acknowledged in Section 4.6 as shown in pages 4-171 to 4-239 that gatherers have noted traveling high into the mountains to find 'opae. However, please note that the HSHEP model included 'opae in its analysis which shows that its habitat will see an increase under the Proposed Action as baseflow is restored to many streams within the License Area when compared to historical stream diversion rates.

With respect to the comment:

However, once again, the DEIS is devoid of watershed specific analysis of the impacts of specific diversions in each stream, depriving the reader of any appreciation for the impacts these specific diversions are having on any particular stream watershed. Without location information on diversions, or a scientific assessment on each affected watershed, the BLNR as a regulator would not be able to fashion reasonable protective measures specific to those affected stream stretches affected by specific diversions.

The HSHEP model is a spatially-referenced model with all diversions and stream segments within the License Area included. The overall summaries of stream results are derived from the impacts on stream segments above and below all major and minor stream diversions associated with the stream. The results from the HSHEP model actually provides exactly what is stated to not exist in the analysis. Please refer to Appendix A of the EIS for more details regarding the HSHEP model and analysis.

Comment 31: *EMI diverts multiple streams, up to four times in some instances, affecting the stream course at varying elevations differently. These multiple diversions along a single stream reflects the gaining and losing nature of that stream segment, which may affect the nature of the protective measures and underscore why a one-size-fits-all approach is inappropriate.*

Response 31: As discussed in Response #30 above, the HSHEP model is a spatially-referenced model with all diversions and stream segments within the License Area included. The overall summaries of stream results are derived from the impacts on stream segments above and below all major and minor stream diversions associated with the stream. The results from the HSHEP model actually provide exactly what is stated to not exist in the analysis. Please refer to Appendix A of the EIS for more details regarding the HSHEP model and analysis.

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Comment 32: *Similarly, the CIA discussion of kupuna who once caught and ate `ohua and hinana living in certain tributaries suggests that those locations might be targeted for similar protective measures. CIA at 392. However, without more location-specific data or impact assessments, BLNR would not be able to address possible protective measures that would have to rely on which tributaries are targeted for possible diversions that affect those species.*

Response 32: You are correct that the CIA included with the Draft EIS stated at page 392, "Kūpuna who lived near the streams in the 1920s and 1930s also caught and ate `ōhua and hinana, which were prevalent in tributaries." Mr. Hau reported that back in the 1920s and 30s, those who lived near the streams would catch `ōhua, which would be gathered well before sunrise, where they'd be prepared and put in the dry box and then "eaten like candy." Mr. Hau explained that hinana were prepared and eaten the same way. The kama`āina would see large populations of fish when they were kids but now in their older years, it is rare to find the same species in these streams. In any event, no specific locations for where these were gathered was given.

As stated in Response #30 above, the HSHEP model is a spatially-referenced model with all diversions and stream segments within the License Area included. The overall summaries of stream results are derived from the impacts on stream segments above and below all major and minor stream diversions associated with the stream. The results from the HSHEP model actually provides exactly what is stated to not exist in the analysis. Please refer to Appendix A of the EIS for more details regarding the HSHEP model and analysis.

Comment 33: *Again, one of the documented community concerns listed in the CIA was seeking clarification on stream flow, water diversion, and climate statistics as is expressed in the following questions: (1) How much water is being diverted at each location of intakes, ditches, dams, pipes, and flumes?; (2) How much water is being diverted from East Maui to Central Maui?; and (3) Is climate change accounted for? CIA at 393-94. The recommendation provided is as follows: "It is recommended that these questions be addressed by qualified professionals who possess an understanding of stream flow mechanics, water diversion, and climate statistics within the License Area." While the more detailed assessment may presumably be found in Appendix A of the DEIS, none of these crucial questions are answered. Notably, these same concerns were brought to the attention of A&B prior to them conducting the aforementioned reports in our EISPN comments back in 2016. Hence, the DEIS provides none of the disclosures required by the law and denies the BLNR and the public of critical information related to the "unavoidable impacts" of A&B's proposed use.*

Response 33: Regarding your comment about the enumerated community concerns provided in the CIA:

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(1) Regarding the amount of water being diverted at each intake, as discussed in Response # 15, EMI has gauges located in several locations across the License Area. These gauges measure the flow in the ditches only. It is not feasible to measure flow in the streams, as there are limited areas that contain the necessary control points to accurately measure streamflow. Similarly, it is not feasible to provide total diversion amounts of a particular portion of the License Area, i.e. diversion amounts only from the Huelo portion of the License Area, diversion amounts only from the Nahiku portion of the License Area, etc. The USGS used to have gauges at each of the License Area boundaries. However, due to USGS cost cutting, several of those gauges were removed. It is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. In addition, proper gauging would involve some form of stream alteration, such as a weir in order to properly measure stream flow. EMI has never conducted stream gauging as that lays within the expertise the CWRM and the USGS.

As noted in the CWRM D&O, the measurements EMI takes are at Honopou Stream and Maliko Gulch, however, for the purpose of measuring the aggregate flow from entire License Area, the Honopou Stream measurement reading was used. As discussed in Draft EIS Section 2.1.2 (East Maui/License Area) and 2.1.4 (Central Maui Field System), the long-term average delivery of water by the EMI Aqueduct System up until 1986 had been approximately 165 mgd (prior to any use of water by the MDWS or HC&S on the Central Maui agricultural fields). This measurement was taken at Maliko Gulch. Under the Proposed Action, it is estimated that approximately 87.95 mgd will be diverted from the License Area, and an additional 4.37 mgd will be diverted in between Honopou Stream and Maliko Gulch. Thus, an estimated total of approximately 92.32 mgd would be conveyed to supply the MDWS for users in Upcountry Maui and the agricultural fields in Central Maui.

(2) Regarding the amount over water being diverted for use in Central Maui, as discussed in Section 2.1.2 of the Draft EIS approximately 92.32 mgd would conveyed through the EMI Aqueduct System, most of which (approximately 87.95 mgd) would come from the License Area. Also as discussed in Section 2.1.2, as of the publication of the Draft EIS:

Currently, the EMI Aqueduct System is only diverting approximately 20 mgd. As a result, very little surface stream water is currently being diverted relative to what would be allowed should the Water Lease be awarded per the Proposed Action. However, the amount of water that may be diverted should the Water Lease be issued is substantially less than the

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amount that was diverted during normal sugar production. For example, in 2006 it is estimated that the EMI Aqueduct System delivered approximately 156.69 mgd at Maliko Gulch, whereas under the CWRM D&O, it is estimated that the delivery at Maliko Gulch will be approximately 92.32 mgd (Akinaka, 2019)).

That discussion has been further updated to take into account the fact that Mahi Pono has continued to expand its farming in Central Maui, and water has continued to be diverted through the EMI Aqueduct System to support that effort and continue the supply to MDWS, further updated information has been provided in Section 2.1.4 of the EIS regarding the water diversions authorized for 2021 under revocable permits and the expected uses of that water. See pages 2-30 and 2-32 of the Final EIS.

(3) Regarding considerations of climate change, that topic was addressed within the Draft EIS. See for example Section 4.3.1, discussing the expected climate change trends in East Maui, Upcountry Maui, and Central Maui based on latest climate change publications in the State. Moreover, please note that the CIA has accounted for climate change as shown on pages 4-89 to 4-91.

In summary, these questions were addressed by qualified professionals and those analyses are provided in the EIS.

We acknowledge that in its EISPN comment letter, NHLC's requested specific information regarding diversions to a level of detail that is beyond what could feasibly be provided. As discussed under item (1) above, that information does not exist. Moreover, we understand that it was clear throughout the CWRM proceedings that water diverted from the License Area is not measured at every diversion as noted throughout the CWRM D&O. However, Figure 1-1 of the EIS does depict the locations of the major diversions of the EMI Aqueduct System.

Moreover, the HSHEP model does estimate streamflow at all diversion locations based on watershed and rainfall characteristics. The streamflow estimates are based on the regression relationships published by the USGS in:

Gingerich, S.B., 2005, Median and Low-Flow Characteristics for Streams under Natural and Diverted Conditions, Northeast Maui, Hawaii: Honolulu, HI, U.S. Geological Survey, Scientific Investigations Report 2004-5262, 72 p.

These relationships were extended to cover the License Area. The estimation of streamflow and percent diversion are intended to allow for the relative comparative assessment of the streamflow diversion among different segments of the stream and among different streams.

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Comment 34: *Given the above, BLNR is afforded no mechanisms for the reasonable protection of gathering practices that are specific to the habitat locations in the streams affected by diversions.*

Response 34: Your comment that BLNR is afforded no mechanism for the reasonable protection of gathering practices is unclear, as the CIA that was included with the Draft EIS, and the further supplemented CIA, provide recommended mitigation measures to protect such practices as discussed in Response #9 above. Section 4.6 of the Final EIS has been supplemented with a more detailed discussion of recommended measures to protect gathering practices. With regards to specific habitat locations in streams being affected by the diversions, please refer to Appendix A as the HSHEP model is a spatially-referenced model with all diversions and stream segments within the License Area included. The overall summaries of stream results are derived from the impacts on stream segments above and below all major and minor stream diversions associated with the stream. The results from the HSHEP model actually provides exactly what is stated to not exist in the analysis.

Comment 35: *Streams Not Subject to the 2018 CWRM Decision* *The DEIS identifies 13 streams not subject to a CWRM IIFS and have never been assessed for how stream diversions from them may have affected their habitats. (See, DEIS at 1-16 to 1-19, Table 1-3). A&B must perform, at a minimum, a Ka Pa'akai analysis for each of them and report the results in the EIS, prior to causing any diversions from them. It must also conform to the EIS requirements outlined above, including the "unavoidable impacts" of the use of non-renewable resources, like water, and irreversible curtailment of the uses of the environment, like stream diversions.*

Response 35: We respectfully disagree with your comment that the non-petitioned streams were never assessed. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which was subject to the CWRM D&O as a "connectivity stream." Moreover, the Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP Model) assessed all streams within the License Area that are, or were, diverted by the EMI Aqueduct System.

The CWRM D&O did not set IIFS for 12 streams within the License Area that are diverted by the EMI Aqueduct System because those streams were not included in the petitions filed by NHLC on behalf of Nā Moku. However, the CWRM D&O did take those streams into account. CWRM D&O at ii. Moreover, while 12 diverted License Area streams were not assessed pursuant to specific petitions to establish IIFS, those streams are subject to the 1988 IIFS set for the East Maui streams. Please note that the CWRM, as is evident from its website, both from its

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own research and in conjunction with USGS, has information on the License Area streams, including the non-petitioned streams, which information has been made available to the BLNR. Furthermore, under the revocable permits, annual reports, and now quarterly reports, are submitted by EMI to the BLNR, which identify the total amount of water being diverted from License Area measured at Honopou, i.e., water from both petitioned streams and non-petitioned streams. Hence, the 12 non-petitioned streams were included as part of the overall analysis of the EIS and associated technical studies. In terms of stream habitat, the HSHEP model provided as Appendix A analyzed those streams to assess changes in native amphidromous stream animal habitat with respect to stream diversions which is summarized in Section 4.2.1 of the EIS in the section covering East Maui.

The HSHEP model is a spatially-referenced model with all diversions and stream segments within the License Area included. The overall summaries of stream results are derived from the impacts on stream segments above and below all major and minor stream diversions associated with the stream. The results from the HSHEP model provides an analysis of habitat impacts for petitioned and non-petitioned streams. Please refer to Appendix A of the EIS for more details regarding the HSHEP model and analysis. Depending on the stream diversion type, generally speaking, a diversion can impact stream habitat by removing water from the stream, altering the natural path of the stream water or creates a barrier to movement up and down the stream. However, as long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best.

Regarding your comment about a *Ka Pa'akai* analysis, the CIA included in Appendix F and summarized in Section 4.6, was a regional study that was not limited to only the streams that were addressed by the CWRM D&O. The CIA provides a synopsis of anticipated impacts of the Proposed Action to identified cultural resources and practices and offers mitigation recommendations gathered from the community and other consultant studies. The CIA assessed the impacts, alternatives, and measures to mitigate impacts of the proposed Water Lease on the cultural resources, practices and beliefs identified through this process. The assessment includes discussion of potential impacts on the following: 1) regional environment; 2) taro farming; 3) freshwater ecosystems; 4) cultural sites; 5) access by cultural practitioners; and 6) climate change. CSH then developed recommendations for mitigation based upon CSH's expertise, research and input received during the CIA consultation process, and based upon other technical studies that have been prepared for the EIS. Section 4.6 of the Final EIS has been supplemented with a more detailed discussion of the matters above. See pages 4-239 to 4-252 of the Final EIS.

Regarding your comment about unavoidable impacts, we note that the non-petitioned streams are also included within the discussions within Chapter 6 of the Draft EIS regarding the irretrievable and irreversible commitments of resources. Moreover, as discussed in Section 6.1:

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The use of surface/stream water for domestic and agricultural purposes could be viewed as an irretrievable use of the resources, to the extent that the water has been removed from its natural course. However, the use of this surface water is part of the cycle to return the water to the environment. For example, some of the water applied to land will return to the atmosphere through evaporation and transpiration through plants while water entering the ground will eventually discharge into the ocean. Water consumed by humans and animals, will evaporate through breathing and perspiration, and wastewater effluent from cesspools, septic systems and wastewater treatment plants that discharge into the ground will eventually reach the ocean. Water in the atmosphere, including water evaporating from the ocean and land, will fall as rain, including in East Maui, completing the cycle. This is an open cycle involving the movement of water through the atmosphere, land and oceans of the earth.

As part of a global hydrologic cycle, water is generally considered a renewable resource. In any particular location and time, however, there may only be a limited amount available, for example, to flow in streams or be diverted for other uses. To the extent that a commitment is made as to where that water goes or is used, the result is an irreversible use of that water for that period of time. The Proposed Action is a Water Lease with 30-year commitment to the proposed use of water. With careful management and responsible usage, water is a renewable resource and with that understanding the Water Lease would not involve an irretrievable commitment of the water resource.

Comment 36: *These disclosures must be related to each specific stream watershed and brackish water ecosystem that is impacted by the various levels of diversions. A reasonably objective impact assessment would address impacts of each specific diversion on the stream habitat of each particular stream affected by those diversions. There are sound biological reasons for determining how depleting flow in one stream may impact an adjacent stream or other streams within the same region. In other words, the impact assessment should account for cross-stream effects on habitats as well.*

Response 36: Regarding assessing impacts of each specific diversion on the stream habitat, this was evaluated using the HSHEP model as discussed in various responses herein, including specifically Response #11. Values for entrainment and passage were applied to each diversion and the combination of multiple diversion on a stream were also calculated.

Regarding your comment about flow in one stream impacting other streams (cross-stream effects), this is unable to be accurately assessed currently as the HSHEP model cannot analyze this as there is not enough information scientifically available to properly model cross-stream effects.

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Comment 37: *Impacts on Flora.* As expressed in our comments to the EISPN, we raised a concern that the EIS should not only consider impacts on flora found in the four license areas, but in areas that lie beyond and downstream that are impacted by the Proposed Action's reduction in streamflows.

Response 37: Please note that Appendix C (Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease) of the EIS that was prepared by SWCA included a survey of the approximately 30,000 acres of agricultural land in Central Maui that it referred to as the "Service Area" and approximately 33,000 acres of land in East Maui referred to in the SWCA report as the License Area. These areas were collectively referred to as the "Study Area" throughout the SWCA report. This report is summarized in Section 4.4 of the EIS, which has been supplemented in the Final EIS with additional information about the Service Area. See pages 4-121 to 4-124 of the Final EIS.

Regarding your comment about assessing the areas downstream of the License Area, please note that those areas were not directly assessed as those lands are primarily privately owned by various entities. However, the HSHEP model addressed streamflow impacts on the stream habitat in Section 4.2.1 of the EIS. Specifically, Section 4.2.1 of the Draft EIS states:

The HSHEP model was designed to quantify how various man-made changes affect native Hawaiian amphidromous stream animals and is based on statewide observations of these animals' distribution and habitat. The HSHEP model considers the primary impacts of surface water diversion, which include loss of instream habitat from constriction or diversion of stream flow, creation of barriers to stream animal upstream movement and entrainment of downstream drifting larvae.

Hence, it can be concluded that barriers created by stream diversions may impact downstream drifting larvae that would otherwise populate downstream habitats.

Comment 38: *We further stated that the EIS should address the impact of reduced streamflows on the type and amount of vegetation that grows in the streambed, effects on native species, and the proliferation of alien species in and along the streambeds. Not only did the DEIS fail to address vegetation within the streambed, the survey was only conducted within the License Area.*

Response 38: A further discussion of the impacts from reduced stream flows on has been added to EIS Section 4.4 and Appendix C of the Final EIS. Section 4.4 of the Final EIS is provided on page 4-121 of the Final EIS.

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Regarding your comment about the effects of flows on native species, as discussed in Response 9 above, Draft EIS Appendix A (Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP Model)) prepared by Trutta, addresses streamflow impacts to the stream habitat which is summarized in Section 4.2.1 of the EIS. Specifically, Section 4.2.1 of the Draft EIS it states:

The HSHEP model was designed to quantify how various man-made changes affect native Hawaiian amphidromous stream animals and is based on statewide observations of these animals' distribution and habitat. The HSHEP model considers the primary impacts of surface water diversion, which include loss of instream habitat from constriction or diversion of stream flow, creation of barriers to stream animal upstream movement and entrainment of downstream drifting larvae.

The EIS concludes that the Proposed Action would have an adverse impact by reducing native stream habitat when compared to full natural flow. Under the Proposed Action, the number of habitat units within the License Area is decreased by approximately 36.1%. But, for the purposes of comparison, it is noted that when compared to when the EMI Aqueduct System operated under a full diversion condition, as it did during sugar operations, the number of habitat units within the License Area increases by 13.8%. In other words, 63.9% of the total habitat units remain within the License Area under the Proposed Action.

Comment 39: *The general conclusion in the DEIS is that the Proposed Action would have no impact on terrestrial flora of fauna resources because the action does not require vegetation removal and it involves "the use of roads and a system that has been in place for over 90 years." The DEIS clearly did not address the potential adverse impacts reduced streamflows would have on vegetation growing in and around streambeds. Accordingly, a more thorough analysis of this impact should be provided.*

Response 39: As discussed on page 4-121 of the Final EIS, the conclusion of the study is that the vegetation types would remain largely the same under the Proposed Action as the vegetation that currently exists is based on the continued use of the EMI Aqueduct System as it is currently being used. As this applies to vegetation, vegetation around the EMI Aqueduct System will continue to be managed as it currently is and has been in the past, which may require occasional vegetation removal. As shown on page 4-123 of the Final EIS, EMI has continually worked closely with the Maui Invasive Species Committee (MISC) and other similar agencies to assist in mitigating non-native weeds along the EMI Aqueduct System and access roads. Typical procedures involve EMI staff notifying MISC of sightings and locations of non-native weeds, and then facilitating access to these identified areas so MISC may conduct appropriate treatment methods.

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However, please note that Section 3.2.2.2 of the Final EIS has been updated to include an additional analysis addressing the potential increase in public access to the License Area that could result from the Modified Lease Area alternative as shown on pages 3-21 to 3-24. Under this analysis, the magnitude of impacts to vegetation experienced would potentially increase throughout the entire License Area. Should the License Area be modified for greater public access, the magnitude of these impacts would be greater if the public is allowed in the eastern portion of the License Area, as the analysis in the SWCA report included as Appendix C to the EIS demonstrates that native and unique flora and fauna species are more likely to occur in the eastern portions of the License Area. Allowing public access to the western portion of the License Area may have a lesser negative impact on biological resources.

Comment 40: *Lo'i Kalo.* In order to address the actual and potential impacts of diversion on kalo growing, the DEIS recommends that a "botanist, ethnobotanist, or similar qualified professional provide an assessment of the ideal conditions of water flow and water temperature needed for kalo growth in comparison to the current water flow and water temperature of impacted areas in order to understand and address the stated impact." DEIS at 4-128; see also, App. F. CIA at 394-95. Again, it is assumed that the IIFS decision "has the potential to reduce or eliminate this cultural impact," as eight of the streams identified by community participants have been fully restored in accordance with the IIFS. Id. While these assumptions as they relate to certain impact areas are devoid of any meaningful review, there may very well be other areas where kalo or crop growing activity is impacted by diversions. As such, there should be an appropriate assessment for areas where prior dewatering of streams, like Honomanū, which may potentially attract a restoration of traditional taro growing areas abandoned due to the lack of a steady source of irrigation water. Similarly, the historic pattern of lo'i kalo growing area much larger than what currently exists. CIA at 391.

Response 40: As discussed above in Response #35, the CIA was a regional study that was not limited to only the streams that were addressed by the CWRM D&O, but instead included the streams within the License Area, including the non-petitioned streams. It is acknowledged that with respect to recommendations to protect native Hawaiian cultural resources and practices, the CIA appended to the Draft EIS recommended, based upon community consultation, that certain studies be performed. However, those studies were in fact performed and the data and analysis was within the Draft EIS. Moreover, in response to comments received on the Draft EIS, Cultural Surveys Hawai'i (CSH), the consultant who prepared the CIA, reviewed those studies and provides additional analysis included in the Final EIS. In light of the numerous technical studies prepared for the EIS, and the related analysis of not only the Proposed Action, but the relevant alternatives, which differ from the water diversions permitted under the CWRM D&O, we cannot agree with your assertion that the EIS relied exclusively on findings and conclusions from CWRM. The CIA provides a synopsis of anticipated impacts of the Proposed Action to

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identified cultural resources and practices and offers mitigation recommendations gathered from the community and other consultant studies. See Response #29 above.

Section 4.6 of the Final EIS has been revised to more fully describe the cultural practices and related impacts for the streams within the License Area, including the non-petitioned streams as shown on pages 4-171 to 4-254 and summarized in Response #29 above.

Regarding your comment about dewatering streams, like Honomanū, and the potential for attracting taro growing areas, as discussed in Response #9, Honomanū Stream was identified as having taro farming impacts. However, it should also be noted as discussed in Section 1.3.4 of the EIS that Honomanū Stream has been ordered to have flow restored as a “Habitat Stream”, which will minimize cultural impacts to taro farming from water diversion at these locations.

The CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. With respect to Honomanū, CWRM D&O, FOF 245 and 247 provide as follows:

245. *There 8 registered diversions in Honomanū, of which five are EMI diversions and one was registered by both EMI and MDWS. The two remaining diversions were registered by Haleakala Ranch for the primary purpose of watering livestock (6,000 to 7,000 heads of cattle) with occasional use for domestic purposes at two cabins on the property. (Honomanū IFSAR § 11.0, p. 80.)*
247. *CWRM records for the hydrologic unit of Honomanū indicate that there are a total of 8 registered diversions. None of the diversions were declared for taro cultivation. (Honomanū IFSAR § 12.0, p. 91.)*

CWRM D&O, FOF 245 & 247.

The historic pattern of lo‘i kalo growing area within East Maui in the vicinity of the License Area was much larger than what currently exists. However, there are no traditions or accounts of regular habitation, cultivation, or intensive land use in the uplands of East Maui generally above 2,000 ft elevation. The portion of the License Area that is located above the 2,000-ft elevation contour includes approximately 19,640 acres. Clarifications on this background have been made to the Archaeological Literature Review and Field Inspection for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas report included as Appendix E in the EIS. Section 4.5 of the EIS, has been updated to include a summary discussion on this historical agricultural land use in East Maui, as provided on pages 4-143 to 4-147.

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Historically, based on kuleana claims located near the coast there could have been up to 447.6 acres of intensive agriculture land use. Historic maps from 1869 and 1922 indicate that there was approximately 1,208 acres of farmland, including approximately 28.9 acres in use for traditional native Hawaiian agricultural practices. Furthermore, a study conducted by Ladefoged et al. (2009) suggests the potential for approximately 1,153 acres of irrigated wetland agriculture within the region of East Maui, with only approximately 152 acres within the License Area.

The EIS addresses the impacts related to East Maui farms that could be affected by the Proposed Action – that is, the known existing and potential farms that depend on water from the various East Maui streams that flow through the License Area as related to the Proposed Action and alternatives. In response to comments received on the Draft EIS questioning the estimation of East Maui farming, an additional review was conducted to expand upon the information previously provided in Appendix I, the East Maui Water Lease: Agricultural and Related Economic Impacts report, which is summarized in EIS Section 4.7.4 in the section focusing on East Maui. See pages 4-288 to 4-293 of the Final EIS.

Comment 41: *Collectively in this EIS draft, the reader cannot know what the significance of impacts there may be from diversions from individual streams without the specifically located stream diversion meters in place that would generate that information. Without that information the DEIS denies the BLNR and those who are affected at any particular stream specific habitat location that has suffered reduced stream flows that could be affecting stream species and marine food species that rely on the brackish water ecosystem interface where streams discharge into the ocean, both of which are of cultural importance to gatherers. This result is unacceptable and renders this cultural impact assessment fatally defective.*

Response 41: Regarding your comment that the reader cannot know the significance of impacts there may be from diversions from individual streams without the specifically located stream diversion meters, again, what is important as to impacts is the amount of water left in the streams, not the amount of water being diverted. The existing IIFS in all of the streams in the License Area defines how much water, at a minimum, is flowing in each stream. Further, it is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. For the purposes of the EIS diversion number readings were used at Honopou Stream (end of the License Area) and Maliko Gulch. Please also see Response #15 for a discussion regarding stream gauges.

Regarding your comment about stream habitat, as discussed in Response #30, the HSHEP model is a spatially-referenced model that includes all diversions and stream segments within the License Area. The overall summaries of stream results are derived from the impacts on stream

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segments above and below all major and minor stream diversions associated with the stream. Please refer to Appendix A of the EIS for more details regarding the HSHEP model and analysis.

Regarding your comment about brackish water ecosystems, with regards to nearshore fisheries and off-shore fisheries, the collected data presented in Appendix B, the East Maui Irrigation Assessment of Streams and the Ocean report, and summarized in Section 4.2.3 of the EIS, suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be negatively impacted. In other words, the analysis presented in Appendix B concluded that impacts from the Proposed Action to ocean fish are negligible. As such, there is no scientifically sound reason to undertake a study of ocean fish in East Maui related to impacts from the Proposed Action. Moreover, evaluation of possible impacts on fisheries and nearshore gathering areas would require rigorous “before/after” experiments to determine changes between periods of diversion and non-diversion, with enough time during each phase for ecosystems to come to an equilibrium. Such an experimental set-up is not feasible, and therefore conclusions based on existing conditions are the most scientifically reasonable way to evaluate potential changes. See East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry report (Appendix B) and EIS Section 4.2.3.

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species (‘O‘opu naniha (*Stenogobius hawaiiensis*), ‘O‘opu akupa (*Eleotris sandvicensis*) and ‘Ōpae ‘oeha‘a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi‘ina‘au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa‘akea will have connectivity flow restoration, while ‘O‘opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

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The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on the pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on the pages 4-78 to 4-83 of the Final EIS.

With regard to the CIA, please note that its impacts, mitigations, and recommendations were partially based on the other technical studies conducted in support of this EIS, and also based upon historical research, submittals in the CWRM IIFS proceedings, and direct consultation. Hence, we do not believe that the CIA is defective.

Comment 42: Proposed Action is Vague. *The Proposed Action specifies no amount representing a volume of water being sought other than the supposed surface water amount that would exceed the CWRM IIFS, i.e., 87.95 mgd, the only figure mentioned for possible use in the DEIS. Nevertheless, throughout the DEIS, there is no objective basis to justify an amount based on any demonstrated level of actual need.*

Response 42: *Contrary to your comment above, in no way does the Proposed Action seek an amount of surface water "that would exceed the CWRM IIFS." The EIS states in numerous sections that the Water Lease would be in compliance with the IIFS requirements of the CWRM D&O. For example, Section 2.1.2 of the EIS states:*

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With the issuance of the Water Lease under the Proposed Action, the EMI Aqueduct System would divert only the maximum allowable amount under the CWRM D&O from streams within the License Area, which is estimated to be approximately 87.95 mgd. The EMI Aqueduct System is estimated to divert an additional 4.37 mgd from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Maliko Gulch.

We respectfully disagree with your comment that there is no basis justifying use of this amount based upon actual need. The purpose and need for the proposed Water Lease, as well as the objectives of the proposed Water Lease, are presented in Sections 1.1 and 1.2 of the EIS. With regard to water needs, in summary, it is to provide water to approximately 30,000 acres of Central Maui agricultural fields so they can remain productive farmlands, and to continue to supply water to the MDWS Upcountry Maui Water System. It is also noted that EMI's continued provision of water to MDWS from sources other than the EMI Aqueduct System are contractually contingent on EMI securing revocable permits and ultimately the Water Lease.

The EIS presents the needs for this water. Section 2.1.4 of the Draft EIS provides the water demands for the Mahi Pono farm plan at full build-out, as follows:

Water Lease Limited to CWRM D&O Farm Plan

The Mahi Pono farm plan assumes the following:

- *The total surface water available for use after system losses is estimated to be approximately 65.88 mgd.*
- *Surface water can be supplemented by a brackish groundwater amount equal to 20 percent of surface water. Taking into account the CWRM D&O, it is estimated that there could be up to 16.47 mgd of brackish groundwater used in the Central Maui agricultural fields. (Plasch, 2019)*
- *Under the CWRM D&O, the total water available for use on the Central Maui agricultural fields after system losses is approximately 82.35 mgd*
- *That total amount of water will be delivered to approximately 30,000 acres. Of those 30,000 acres:*
 - *Approximately 15,950 acres would be used for farming, including 12,850 acres for orchard crops and 3,100 acres for other crops.*
 - *Approximately 13,800 acres would be used for pasture, of which about 4,700 acres would be irrigated.*
 - *Approximately 250 acres would be used for green energy, such as a solar farm.*

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Because there is insufficient surface water to support the entire farm plan, brackish groundwater will also be used.

Given these figures and assumptions, a farm plan consistent with the amount of water available under the CWRM D&O is shown in the table below:

Proposed Use	Acres	Gallon Per Acre a Day	Surface MGD	Ground water MGD	Total MGD	Annual MGD	% of Total
<i>Community Farm</i>	800	3,392	1.87	0.83	2.70	987	3.28%
<i>Orchards (citrus, mac nuts, beverage crops)</i>	12,850	5,089	53.39	12.04	65.43	23,883	79.48%
<i>Tropical Fruits</i>	600	4,999	2.07	0.87	2.94	1,073	3.57%
<i>Row and Annual Crops</i>	1,200	3,392	3.14	0.95	4.09	1,491	4.96%
<i>Energy Crops</i>	500	3,392	1.18	0.53	1.70	622	2.07%
<i>Pasture, irrigated</i>	4,700	1,161	4.20	1.25	5.46	1,992	6.63%
<i>Pasture, unirrigated</i>	9,100	0	0	0	0.00	0	0.00%
<i>Green Energy</i>	250	0	0	0	0.00	0	0.00%
TOTAL	30,000	2,744	65.86	16.47	82.33	30,047.77	100.00%

This farm plan would consist of the following:

- Approximately 20,650 acres of irrigated farm land, including 12,850 of orchard crops, 600 acres of tropical fruit, 1,200 acres of row and annual crops, in addition to a community garden and limited non-GMO energy crops.*
- Approximately 13,800 acres of cattle pasture, comprised of 4,700 acres of irrigated pasture, and 9,100 acres of unirrigated pasture. This should fit the proposed model of grass-finishing on irrigated pasture. The unirrigated acreage is less than 10,000 acres, which helps ensure that that the entire area devoted to unirrigated pasture will remain productive.*

Regarding MDWS' needs, as discussed in Section 2.1.3 of the EIS, with the issuance of the Water Lease in the Proposed Action, the amount of water the MDWS would receive through the EMI Aqueduct System through the Wailoa Ditch is assumed to be consistent with prior use, identified in the CWRM D&O as an average of 7.1 mgd. This water would serve the Upcountry Maui Water System which services the communities of Kula, Pukalani, Makawao Ha'ikū, Hali'imaile, Waiakoa, Kēōkea, Waiohuli, 'Ulupalakua, Kanaio, Olinda, 'Ōma'opio, Kula Kai, and Pūlehu. In Upcountry Maui, the MDWS serves customers' water needs (homes, schools, hospitals, churches, businesses and agriculture) for both domestic (approximately 60% of use)

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and agricultural (approximately 40% of use) purposes, including the agricultural users at the KAP. The Proposed Action will benefit the Maui communities by allowing for continued use and maintenance of the EMI Aqueduct System, which supplies water to the MDWS Upcountry Maui Water System at Kamole-Weir. In addition, the Proposed Action will enable the continued provision of water by EMI to the MDWS at Nāhiku and for MDWS' Pi'iholo and Olinda Water Treatment Plants (WTP), which also source the MDWS Upcountry Maui Water System. The provision of water from EMI land to the MDWS is contractually contingent on EMI securing revocable permits and ultimately the Water Lease.

Hence, the EIS clearly presents actual needs for the surface water to be diverted through the Proposed Action.

Comment 43: *In fact, the specifications of alternatives prescribe no alternative levels of water diversion, except a generally worded "Water Lease Volume Alternative" that is imprecise as to actual amounts of water being sought. Since there is no discussion throughout the entire DEIS regarding the amount of water being sought, there is no elaboration as to the need for the volume of water to be diverted under the Water Lease. Instead of offering different alternatives for water needed to irrigate the crops it has been planning to cultivate since January 2016, the DEIS leaves nothing for the BLNR to consider as projected impacts for the desired level of water A&B is seeking, defeating the very purpose of an EIS.*

Response 43: Contrary to your comment, the amount of water being sought is described in Section 2.1.2 of the Draft EIS and in Response #15 above, and in several other sections of the EIS. Moreover, you seem to have misconstrued the analysis provided on the Reduced Water Volume alternative. As explained in Chapter 3:

*Under Section 11-200-17(f), HAR, a DEIS must include a section discussing alternatives which could attain the objectives of the action regardless of cost, in sufficient detail to explain why they were rejected. In each case, the analysis of the alternatives must be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the Proposed Action and each **reasonable alternative**. Particular attention should be given to alternatives that might enhance the environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks. In addition, an analysis of the "no action" alternative should be included.*

The objectives of the Proposed Action are, as presented in Section 1.2 of the EIS, as follows:

In general, the objectives of the issuance of the Proposed Action (Water Lease) are:

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- *Preserve and maintain the EMI Aqueduct System, including its access roads*
- *Continue to meet domestic and agricultural water demands in Upcountry Maui*
- *Continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses)*
- *Continue to serve community water demands in Nahiku.*

With those objectives in mind, the EIS presented an analysis of the proposed Water Lease authorizing the amount of diversion that would be permitted from the License Area after compliance with the IIFS set forth in the CWRM D&O (see Chapter 4). The EIS also looked at potential alternatives to that option, consistent with the requirements under HAR § 11-200-17(f). See Chapter 3. With respect to water volume, the EIS assessed the anticipated impacts under a Reduced Water Volume alternative and, as required by HAR § 11-200-17, the anticipated impacts under a No Action / No Water Lease scenario. The Reduced Water Volume alternative analyzes impacts from diversions in amounts less than as presented for the Proposed Action, but more than what would be diverted under the No Action / No Water Lease scenario. Under the No Action alternative, approximately 30.76 mgd would be diverted. Section 3.4 of the Draft EIS then evaluates and compares each reasonable alternative against several environmental factors. Table 3-2 has been added to the Final EIS so that readers can compare the varying environmental effects of the alternatives and the Proposed Action. See pages 3-49 to 3-80 of the Final EIS. As such we respectfully disagree with your statement that the EIS does not provide the BLNR information on projected impacts from varying levels of water diversions.

Regarding your comment about A&B planning to cultivate crops since January 2016, please note that A&B sold the Central Maui agricultural fields to Mahi Pono in December 2018 as discussed in EIS Section 1.1. Hence, the EIS presents the projected Mahi Pono farm plan under a Water Lease scenario (see Section 2.1.4) and under a No Water Lease scenario (i.e., the No Action alternative) (see Section 3.4.13).

Comment 44: *In other words, A&B seeks a lease to 33,000 acres of ceded lands, formerly Crown Lands, for the authority to take whatever amounts of water it decides, subject only to the 2018 CWRM IIFS and what water reservation is established for the DHHL, so long as the water is used for: (1) Irrigation water to support agribusiness operations on 30,000 acres of agricultural land in Central Maui; and (2) the domestic water needs of the MDWS.*

Response 44: The terms and conditions of any Water Lease are at the discretion of the BLNR. As discussed in Response #4 above, the BLNR could elect to issue a water lease that authorizes the use of a lesser amount of water. The BLNR may also issue a Water Lease that covers a

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lesser geographical area than the approximately 33,000 acres that were requested in A&B's 2001 application to BLNR for the auction of the Water Lease. The Draft EIS contemplated an alternative of a Modified Lease Area. See Section 3.2.2.2. Moreover, this alternative has been expanded to include a more robust discussion regarding a modified (i.e. smaller) License Area as shown on pages 3-21 to 3-24 of the Final EIS.

You are correct that the water from the Water Lease would be used to farm the Central Maui agricultural fields, within which Mahi Pono envisions cultivating a broad range of food and non-food crops for local consumption by State of Hawai'i residents and visitors. The water would also be used to continue to supply the Upcountry Maui Water System, which serves residential, business, educational, farming, and other uses. And you are correct that the Applicant recognizes that the Water Lease and therefore the water available thereunder would be subject to the rights of DHHL to make a water reservation.

Comment 45: *Without specifications for water amounts sought beyond the MDWS domestic water needs, the DEIS is a vacuous exercise, as it reveals nothing about the potential impacts that would be generated at any level of diversion. A&B, simply put, wants a blank check to be able to disclose impacts from water diversions of unspecified amounts, which it describes in the vaguest of terms. This approach defies a core requirement for EIS content. HRS §343-2 (defining in part "Environmental Impact Statement" as "an informational document ... which discloses the environmental effects of a proposed action, ... and **alternatives to the action** and their environmental effects") (emphasis added).*

Response 45: Once again, we must correct your statement that the EIS did not provide specifications for the water amount being requested. See Response # 15 above. Regarding your comment about potential impacts that would be generated at any level of diversion, the EIS did consider impacts from varying amounts of diverted surface water. The Draft EIS analyzed impacts for each 1 mgd less of surface water related to impacts to the Mahi Pono farm plan under the Reduced Water Volume alternative. Specifically, for each 1 mgd less of surface water there would be a related reduction of 24.51 acres of lands in crops, a reduction in direct sales on Maui of about \$245,000 per year, a reduction in direct sales on Maui of about \$245,000 per year, about 2.4 fewer direct and indirect jobs, and a reduction in State tax revenues of about \$9,000. (Plasch, 2019). Moreover, please note that Table 3-2 has been added to the Final EIS so that readers can compare the varying environmental effects of the alternatives and the Proposed Action. See pages 3-49 to 3-80 of the Final EIS.

We acknowledge that the definition of environmental impact statement under HRS § 343-2 includes the language quoted in your comment. The EIS was prepared consistent with all applicable requirements under HRS chapter 343 and HAR Title 11, Chapter 200. Your comment suggesting that the EIS lacks specificity on the amount of water sought for the Water Lease is

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wrong. As discussed in several places in the EIS, including Section 2.1.2, the maximum amount of water that could be diverted through the EMI Aqueduct System from the License Area while maintaining compliance with the CWRM D&O is approximately 87.95 mgd. That water would be used to supply MDWS up to 7.1 mgd and to irrigate the Central Maui agricultural fields. Moreover, Section 2.1.4 of the EIS includes a description of the Mahi Pono farm plan to be implemented within the Central Maui agricultural fields, and that description provides the various estimated water needs for different sections of the farm. It is not clear how you interpreted these figures to be a "blank check" or "unspecified amounts" of water.

We also acknowledge the HRS § 343-2 calls for disclosure of environmental effects of alternatives to the Proposed Action. Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects, and therefore those alternatives were discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3.

Chapter 3 of the Draft EIS includes a comparative evaluation of the environmental "benefits, costs, and risks" of the Proposed Water Lease and "each reasonable alternative" i.e. (a) through (d). However, Chapter 3 has been supplemented in response to Draft EIS comments to further address variations of the alternatives that had been dismissed from review, and the overall comparative evaluation of alternatives has been clarified through a comparison chart. See pages 3-49 to 3-80 of the Final EIS.

Comment 46: *A&B should have used Mahi Pono's projected water demands for its crop irrigation, reported in detail to the BLNR just last month, in order to accurately incorporate various levels of water diversions from streams. At a minimum, based on Mahi Pono's public representations, this DEIS should analyze impacts of diverting the levels of water it identified (45-55 mgd) and present those anticipated impacts in a cogent analysis to the BLNR and the general public through a revised and updated DEIS. A&B could have easily done such an impact analysis by assuming different levels of water demand related to projected levels of cultivation on the 30,000 acres it is now identifying as future diversified agricultural areas in Central Maui.*

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Response 46: Your suggestion is highly unusual from the perspective of an EIS preparer and is inconsistent with HRS Chapter 343. EISs are prepared to provide as complete of disclosure as is reasonably possible at the time, and to present the impacts of the particular action proposed. The purposes of disclosure and exploration of impacts would be circumvented if the EIS, as you recommend, only analyzed the very short-term uses of the diverted water, the use of which is permitted under revocable permits and not a water lease. HAR § 11-200-1(e) directs that the Draft EIS "shall contain a project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact . . . (5) Phasing and timing of action." Section 2.1.5 of the EIS provides the timing and phasing of the proposed Water Lease, and explains that Mahi Pono estimates it will need 10 years for full implementation of the farm plan.

An estimated 10 years will be required for Mahi Pono and lessees to remove volunteer sugarcane and weeds from the approximate 30,000 acres, amend soils, install field improvements, build warehouses and other structures, and plant crops. The predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years (Plasch, 2019).

The EIS analyzes the full scope of the Proposed Action and does not seek to provide only an abbreviated analysis as you suggest it should have.

Regarding your comment that water diversion amounts projected by Mahi Pono as of October 2019, please note that Mahi Pono's most recent water use projections as presented to the BLNR in November 2020, are shown on pages 2-30 and 2-32. Moreover, the impacts of both the full amount that could be diverted after taking into account the limitations under the CWRM D&O, and the impacts of lesser amounts of water than the full amount permitted under the CWRM D&O, were analyzed in the EIS. In terms of amounts of water diverted, Chapter 3 of the EIS presents the analysis of two lesser water scenarios, identified as the Reduced Water Volume alternative, and the No Action alternative. The Reduced Water Volume alternative analyzes impacts from diversions in amounts less than as presented for the Proposed Action, but more than what would be diverted under the No Action/No Water Lease scenario. Hence, the 44-55 mgd is analyzed from the perspective of a reduction from the amount diverted under the Proposed Action. Under the No Action alternative, approximately a total of 30.76 mgd would be diverted. Section 3.4 of the Draft EIS then evaluates and compares each reasonable alternative against several environmental factors. Contrary to your statement, such an analysis is not "easily done" as it required analysis from the appropriate technical consultants. However, please note

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that Table 3-2 has been added so that readers can compare the varying environmental effects of the alternatives and the Proposed Action. See pages 3-49 to 3-80 of the Final EIS.

Comment 47: *Incidentally, Mahi Pono demonstrated that it has actual calculations for projected water demand. In the October 2019 meeting of the BLNR, Mahi Pono revealed that it is seeking 45-55 mgd for its current agricultural plan. However, there is no hint of any such projected demand in the DEIS, nor any justification for any projected water demand and the impacts those levels of water diversion would generate. Specifically, how much water would be diverted at each individual stream in order to accommodate the demand amount? A meaningful impact assessment cannot be entertained without meeting these two simple criteria: (1) a fair acknowledgment and calculation as to the amount of water demanded; and (2) how that volume of water is proposed to be diverted from stream sources.*

Response 47: Regarding your comment about the October 2019 BLNR meeting, please note that this was after the publication of the Draft EIS, which was on September 8, 2019. Section 2.1.4 of the Final EIS has been updated as shown on pages 2-30 and 2-32, to better explain how much water is available now and expected for the near term for agricultural crops with more current water projections. Your comment that the Draft EIS did not include projected water demands is wrong. Expected water demands of the Mahi Pono farm plan at full build-out was discussed in detail in Section 2.1.4 of the Draft EIS and further discussed Response #42 above. The water demands for various areas of the farm based upon projected farming uses are depicted in gallons per acre a day.

Regarding your question about how much will be diverted at each individual stream in order to accommodate the demand, please note as discussed in Response # 15 above, it is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gages in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gages to wash away. For the purposes of the EIS, total diversion figures were provided at the Honopou boundary of the License Area and at Māliko Gulch.

Regarding your comment that a meaningful impact assessment cannot be entertained without meeting the two criteria identified in your comment, the amount of water requested is the maximum amount of water available for diversion after compliance with the CWRM D&O (although the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the County of Maui DWS and of Mahi Pono's agricultural operations in Central Maui). This is noted in several places throughout the Draft EIS including p. 2-8, which provides "With the issuance of the Water Lease under the Proposed Action, the EMI Aqueduct System would divert only the maximum allowable amount under the CWRM D&O from streams within the License Area, which is estimated to be approximately

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87.95 mgd." The EIS also acknowledges DHHL's rights to a water reservation. As for your comment about how the water would be diverted, it will continue to be diverted through the EMI Aqueduct System, which has been in operation for over 100 years.

Comment 48: *After considering the HSHEP model results that the Proposed Action would have a negative impact by reducing native stream animal habitat from "Natural Flow" conditions in its discussion of the 2018 CWRM D&O setting the IIFS, A&B asserts how the CWRM should make decisions about instream flows in their analysis. "[The CWRM must weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses. It is also its duty to establish IIFS that protect instream values to the extent practicable and to protect the public interest." (DEIS at 4-57). Given these considerations, the CWRM was cited in their decision as stating that it is both "reasonable and beneficial to use a portion of East Maui stream water for the development of diversified agriculture on Maui's central plains." (DEIS at 4-58, citing CWRM D&O at vi).*

While the above considerations may be applicable for the CWRM in setting the IIFS, this analysis is devoid of the specificity required for a meaningful EIS. The present or potential instream values can only accurately be determined when there are actual values, i.e., the amount of water being demanded, is attributed to that value. Importantly, even though the CWRM has agreed that a portion of East Maui stream water should be used for the development of diversified agriculture, it is up to the EIS to determine what that "portion" should be and to justify that value accordingly. The DEIS has failed to do so and is misleading by broadly quoting the CWRM in order to justify diverting an undisclosed amount of stream water after the issuance of the subject Water Lease."

Response 48: We strongly disagree with your comment that the EIS is devoid of the specificity required for a meaningful EIS. As discussed in Response #2 above, the Draft EIS fully complies with all relevant requirements, including the content requirements set forth in HAR § 11-200-16 and 11-200-17, and includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement. As discussed in Response #6, Chapter 4 of the Draft EIS provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields.

The analysis in Chapter 4 considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social

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Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts.

The Draft EIS also included and relied upon nine technical studies, provided as Appendix A through I, as follows: Appendix A, Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP Model); Appendix B, East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry; Appendix C, Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease; Appendix D, Historical Structure Assessment East Maui Aqueduct System; Appendix E, Archaeological Literature Review and Field Inspection for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas; Appendix F, Cultural Impact Assessment for the Nāhiku, Ke‘anae, Honomanū and Huelo License Areas; Appendix G, A&B Proposed Water Lease for the Nāhiku, Ke‘anae, Huelo, and Honomanū Social Impact Assessment; Appendix H, Economic and Fiscal Impact Study Proposed Water Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Area; and Appendix I, East Maui Water Lease: Agricultural and Related Economic Impacts. In light of the extensive information, research, and analysis in the Draft EIS, and as further updated in the Final EIS, we believe the EIS provides more than sufficient specificity for a meaningful EIS.

As you assert, the present or potential instream values can only accurately be determined when there are actual values, i.e., the amount of water being demanded. As discussed in Response #42 above, the amount of water estimated to be diverted from the License Area under the Proposed Action is approximately 87.95 mgd. That is estimated to be the maximum amount of stream water that could be diverted from the License Area while maintaining consistency with the IIFS under the CWRM D&O.

We respectfully disagree with your comment that it is up to the EIS to determine what “portion” of the License Area surface water should be used for the development of diversified agriculture. An EIS is a disclosure document to inform decision-makers. In this case, the subject EIS is a disclosure and informational document prepared to disclose the effects of a proposed Water Lease on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed Water Lease, measures proposed to minimize adverse effects, and alternatives to the Water Lease and their environmental effects. Moreover, the comparative table provided in Chapter 3 of the Final EIS, see pages 3-49 to 3-80, attempts to summarize in tabular format the nature of the varying environmental effects of the alternatives and the Proposed Action.

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Regarding your comment that the EIS should justify the amount of water requested, we believe that the EIS properly discloses the impacts of the proposed Water Lease, which are largely beneficial in that a viable local diversified agricultural enterprise is beneficial for Central Maui, and for the County of Maui, as well as the State of Hawai'i, providing numerous jobs, economic and fiscal benefits, and increasing food security. However, the amount of water that is authorized for diversion from the License Area is a matter for BLNR determination at the point that it is issuing a water lease.

Comment 49: *Response to Comments. As the Hawai'i Supreme Court has observed, the "applicant must respond in writing and address all concerns and questions before proceeding with the development of the EIS. Once this phase of the process is complete, the applicant then begins preparation of the EIS." Sierra Club v. Office of Planning, 109 Haw. 411, 415 (2006) (emphasis added). See also, HAR §§ 11- 200-15(D), -22(C) and -23. A&B has ignored or discounted many of the questions asked in our previous letters and comments. To the extent any of our questions or concerns remains unanswered, we request the EIS not be accepted until those concerns are answered and adequately addressed.*

Response 49: You seem to have conflated the rules related to responses to comments. The EIS process provides for two public review and comment period. The first, under HAR § 11-200-15, runs for 30 days from the date that OEQC publishes notice of the EISPN. The second period, described in HRS § 343-5 ("The applicant shall respond in writing to comments received during the review and prepare a final statement.") and HAR § 11-200-22, runs for 45 days from the date of publication of the Draft EIS. These two comment periods impose different standards for how the Applicant is to respond to the comments.

Comments timely submitted on an EISPN must be responded to "in writing and as appropriate, incorporated into the draft EIS" whereas comments timely submitted on a Draft EIS must include a "point-by-point discussion of the validity, significant, and relevance of comments" and a "discussion as to how each comment was evaluated and considered in planning the proposed action." As such, comments timely submitted on a Draft EIS require a more detailed response than responses required for EISPN comment letters. This is perhaps fitting in light of the fact that the Draft EIS contains far more information and studies than is provided in an EISPN. The more detailed information in a Draft EIS, together with the longer public review period, allows an interested commenter to raise specific questions or concerns that then require a point-by-point response.

You do not offer any specific examples of how you think NHLC's comments have been ignored. NHLC was contacted as part of the pre assessment consultation process for this EIS, and in response NHLC submitted a letter dated December 26, 2016. See Appendix J. NHLC was

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notified of the publication of the EISPN. NHLC submitted a letter dated March 10, 2017 in response to the EISPN, and that letter was responded to. Copies are provided in Appendix M.

For clarification, we note that your reference to *Sierra Club v. Office of Planning* was to a citation to *Price v. Obayashi Hawaii Corp.*, 81 Hawaii 171, 180 (1996), and more specifically to the OEQC's 1992 Guidebook for the Hawai'i State Environmental Review Process, which is long obsolete. In fact, the Environmental Impact Statement Rules that were in effect at the time of the *Obayashi* decision were superseded as of August 31, 1996.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Nick Drance <nick@themaui miracle.org>
Sent: Wednesday, November 6, 2019 10:17 PM
To: lan.c.hirokawa@hawaii.gov; Public Comment; Senenglish@capitol.hawaii.gov;
repdecoite@capitol.hawaii.gov; Kelly King; Mike.Molina@co.maui.hi.us
Subject: Water lease for the Nahiku and other streams
Attachments: Planning Dept. Testimony Nov 7 2019.docx

Please see attached.
Mahalo nui,
Nick Drance



Nicholas James Drance
Kihei, Hi 96753



The conversation today relates to the structure of an antiquated system originated at a time when business had unbridled power. That environment no longer exists. To consider whether or not this lease should be granted pre-supposes that the existing system is appropriate. It is not.

While this may not be the time to create a new, more equitable, efficient and effective system, the need to do so must be taken into consideration, nevertheless. That was not obvious 100 years ago. It is, today.

In addition to that, the entities charged with the responsibility to administer an antiquated, out of day system, do so with seeming impunity. I don't know these individuals personally and I cannot say they do so intentionally. However, from this point forward, whatever happens, happens within the circumstances I describe.

The question before us presupposes the appropriateness of this out of date, inappropriate system but that creates a conundrum. On an individual, personal level, it's understandable that the issue might be viewed through that narrow lens. It's understandable that in a corporate culture, where many accept the status quo, however outdated or inappropriate it might be, that viewing those circumstances through a much broader lens might appear rebellious. Socially unacceptable. So, I don't mean to pass judgement on individuals but as I say, from this moment forward, the need to view these circumstances through that broader lens is obvious.

Those who have the power and responsibility to make these determinations do so in that complicated environment. Difficult as it may be, it's always the right thing to do, to view considerations through a broad lens. Anything less is subjective and by definition, not honest. It's not right to consider some views and disregard others. All views must be taken into consideration at all times, in service to the greatest good.

It is right to respect official Maui County Vision Statement and Core Principles Statements. I've included them here. In the end, they are intended to provide a roadmap toward long term environmental, cultural and economic sustainability. Viewing the issue at hand today, within the lens of an antiquated system that was established in a world far less knowledgeable than today, does not follow the values expressed in these current, official vision statements.

Given that, it is inappropriate to grant the lease in question, as written, at this time. Those charged with the responsibility to govern and make these choices must do so within today's broader lens. You must make your judgements within that broader lens and that means that a long-term lease is wrong. What's right is to rely upon our current system of government to do its job and redefine antiquated, out of date constructs.

I understand business and Mahi Pono deserves the right to fulfill their stated intentions and promises made to the residents of this island. They deserve to be supported to that end. Everyone must conduct themselves in good faith and be encouraged to do so.

As a businessman, I say, one bird is worth two in the bush. In business law, the term is caveat emptor, let the buyer beware. These are universally recognized truths that must be applied at this time. I suggest a two-year lease, with contingencies that the parties can agree upon in good faith. That would allow a broader lens to be applied. That would allow those who have the power to determine these things, to do so in the spirit of stewardship.

Mahalo nui,

Nick Drance
The Maui Miracle.org
Kihei, Hi. 96753

727-0224

<https://themaumiracle.org/government/vision-statement/>

2030

VISION STATEMENT

Ua mau ke ea o ka `āina i ka pono

Maui Island will be environmentally, economically, and culturally sustainable with clean, safe, and livable communities and small towns that will protect and perpetuate a pono lifestyle for the future.



Core Values

To achieve our island's vision, we will be guided by the following values:

- A. Adopt responsible stewardship principles by applying sound natural resource management practices;
- B. Respect and protect our heritage, traditions, and multi-cultural resources;
- C. Plan and build communities that include a diversity of housing;
- D. Retain and enhance the unique identity and sense of place;
- E. Preserve rural and agricultural lands and encourage sustainable agriculture;
- F. Secure necessary infrastructure concurrently with future development;
- G. Support efforts that contribute to a sustainable and diverse economy for Maui;
- H. Create a political climate that seeks and responds to citizen input;
- I. Respect and acknowledge the dignity of those who live on Maui;
- J. Establish a sustainable transportation system that includes multiple modes, including walking, biking, and mass transit, as well as automobile-based modes; and
- K. Recognize and be sensitive to land ownership issues and work towards resolution.

<https://themaumiracle.org/government/core-principles/>

Maui County General Plan 2030

CORE PRINCIPLES

To accomplish our vision, the people of our islands must foster and respect the Aloha Spirit. We must consider the future generations of Maui County and be true to these core principles:

1. Excellence in the stewardship of the natural environment and cultural resources;
2. Compassion for and understanding of others;
3. Respect for diversity;
4. Engagement and empowerment of Maui County residents;
5. Honor for all cultural traditions and histories;
6. Consideration of the contributions of past generations as well as the needs of future generations;
7. Commitment to self-sufficiency;
8. Wisdom and balance in decision making;
9. Thoughtful, island-appropriate innovation; and
10. Nurturance of the health and well-being of our families and our communities.



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Nick Drance
The Maui Miracle
nick@themaumiracle.org

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Nick Drance:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The conversation today relates to the structure of an antiquated system originated at a time when business had unbridled power. That environment no longer exists. To consider whether or not this lease should be granted pre-supposes that the existing system is appropriate. It is not.*

Response 1: Your comments are unclear. We assume that your comment relates to the physical condition of the EMI Aqueduct System. In this regard, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System. We also note that Appendix D of the EIS provides a Historical Structure Assessment East Maui Aqueduct System prepared by Mason Architects to provide an assessment of the historical significance of the EMI Aqueduct System.

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Regarding your comment “that environment no longer exists” is unclear. we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe‘e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals’ habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that

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Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

Comment 2: *While this may not be the time to create a new, more equitable, efficient and effective system, the need to do so must be taken into consideration, nevertheless. That was not obvious 100 years ago. It is, today.*

Response 2: Again, your comments are unclear. As noted in Response #1 above, we assume that your comment relates to the physical condition of the EMI Aqueduct System. In this regard, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System. We also note that Appendix D of the EIS provides a Historical Structure Assessment East Maui Aqueduct System prepared by Mason Architects to provide an assessment of the historical significance of the EMI Aqueduct System.

Moreover, it should be noted Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown on page 2-25.

Comment 3: *In addition to that, the entities charged with the responsibility to administer an antiquated, out of day system, do so with seeming impunity. I don't know these individuals personally and I cannot say they do so intentionally. However, from this point forward, whatever happens, happens within the circumstances I describe.*

Response 3: Your comments are unclear. As discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going

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on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System. Furthermore, EMI has much of the institutional knowledge needed to properly operate the EMI Aqueduct System.

Comment 4: *The question before us presupposes the appropriateness of this out of date, inappropriate system but that creates a conundrum. On an individual, personal level, it's understandable that the issue might be viewed through that narrow lens. It's understandable that in a corporate culture, where many accept the status quo, however outdated or inappropriate it might be, that viewing those circumstances through a much broader lens might appear rebellious. Socially unacceptable. So, I don't mean to pass judgement on individuals but as I say, from this moment forward, the need to view these circumstances through that broader lens is obvious.*

Response 4: Regarding your comment that the appropriateness of the system, as noted in Response #1 and Response #2 above, we assume that your comment relates to the physical condition of the EMI Aqueduct System. In this regard, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System. We also note that Appendix D of the EIS provides a Historical Structure Assessment East Maui Aqueduct System prepared by Mason Architects to provide an assessment of the historical significance of the EMI Aqueduct System.

Your comments about viewing circumstances through a broader lens is unclear. However, as noted in Response #1 above, an EIS must consider cumulative impacts, which means “*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*” HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Comment 5: *Those who have the power and responsibility to make these determinations do so in that complicated environment. Difficult as it may be, it's always the right thing to do, to view considerations through a broad lens. Anything less is subjective and by definition, not honest. It's not right to consider some views and disregard others. All views must be taken into consideration at all times, in service to the greatest good.*

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Response 5: Your Comment #5 above is unclear. Please note that the EIS is a disclosure document and does not authorize any action. With regards to your comment that all view must be taken into consideration, we note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). The Applicant made every reasonable effort to convey information through the Draft EIS in a manner that is accurate, thorough, and appropriately concise in order to provide the public with an opportunity to fairly analyze the potential impacts of the Proposed Action. Moreover, over 400 comments were received in response to the subject Draft EIS, which will be responded to and reproduced in the Final EIS.

Comment 6: *It is right to respect official Maui County Vision Statement and Core Principles Statements. I've included them here. In the end, they are intended to provide a roadmap toward long term environmental, cultural and economic sustainability. Viewing the issue at hand today, within the lens of an antiquated system that was established in a world far less knowledgeable than today, does not follow the values expressed in these current, and official vision statements.*

Response 6: Thank you for providing vision statements and core principles statements from the Maui County General Plan. We note that the County of Maui Planning Department, in its comment letter on the Draft EIS, wrote that "the proposal is consistent with County long-range plans, such as the Maui Island Plan and our community plans, which include policies and actions to support agriculture, sustainable local food source, conservation, open space and business. In addition, they call for the protection of the environment, near shore waters and water source/aquifers." The Proposed Action does not specifically relate to every single policy and objective as is the case with any project, however, the Proposed Action is supportive of numerous policies and objectives in the plans discussed in Chapter 5. Hence, we respectfully disagree with your comment that the Proposed Action does not follow the values expressed in these current, and official vision statements.

Comment 7: *Given that, it is inappropriate to grant the lease in question, as written, at this time. Those charged with the responsibility to govern and make these choices must do so within today's broader lens. You must make your judgements within that broader lens and that means that a long-term lease is wrong. What's right is to rely upon our current system of government to do its job and redefine antiquated, out of date constructs.*

Response 7: Please note that as discussed in Response #5 the EIS is a disclosure document and does not authorize any action. As discussed in Section 1.4 of the Draft EIS, by order dated July 8, 2016, the Board of Land and Natural Resources (BLNR) directed A&B to proceed with the preparation of an EIS. Prior to that, BLNR, by order dated April 14, 2016, had directed A&B to

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commence the EIS process and to provide a scope of work for the preparation of an environmental review document pursuant to Chapter 343, HRS. The BLNR instructed that the scope of work should distinguish between those matters that can be undertaken prior to the CWRM decision on the petitions to amend the IIFS, and those matters that require the final CWRM IIFS decision. On June 9, 2016, A&B submitted to the BLNR a Scope of Services for the Preparation of a Chapter 343, HRS Environmental Impact Statement for the Proposed Lease for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. Hence, the Water Lease decision-making process will commence after the EIS process is complete.

Comment 8: *I understand business and Mahi Pono deserves the right to fulfill their stated intentions and promises made to the residents of this island. They deserve to be supported to that end. Everyone must conduct themselves in good faith and be encouraged to do so.*

Response 8: We acknowledge your comments.

Comment 9: *As a businessman, I say, one bird is worth two in the bush. In business law, the term is caveat emptor, let the buyer beware. These are universally recognized truths that must be applied at this time. I suggest a two-year lease, with contingencies that the parties can agree upon in good faith. That would allow a broader lens to be applied. That would allow those who have the power to determine these things, to do so in the spirit of stewardship.*

Response 9: We acknowledge your comments. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability." The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough

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period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Marti Townsend <marti.townsend@sierraclub.org>
Sent: Thursday, November 7, 2019 7:27 PM
To: Public Comment
Subject: Sierra Club DEIS Comments EMI East Maui Water Leases
Attachments: EMI Draft EIS SCH Comments Nov 7 2019.pdf

Aloha Mr. Matsukawa,

Thank you for receiving the Sierra Club's comments on the Draft environmental impact statement for the east Maui water leases. Please see attached.

Aloha,
Marti

Marti Townsend, Director (she/hers)



www.sierraclubhawaii.org

808-538-6616



SIERRA CLUB OF HAWAII

MĀLAMA I KA HONUA. *Cherish the Earth.*

TO: Mr. Earl Matsukawa AICP,
1907 S. Beretania Street, Suite 400
Honolulu, HI 96826
waterleseeis@wilsonokamoto.com
(808) 946-2277

DATE: November 7, 2019

RE: Public Comments of the Sierra Club on the Draft Environmental
Impact Statement for the Proposed Lease (Water Lease) for the
Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas (East Maui)
by Alexander & Baldwin Inc./East Maui Irrigation Company

Thank you for the opportunity to comment on the draft environmental impact statement (DEIS) submitted by Alexander & Baldwin, Inc. and East Maui Irrigation Co. Ltd (collectively herein A&B) for the proposed leased areas of East Maui.

This DEIS is deficient. As detailed in our comments below, this document fails to meet the standards for an environmental impact statement. It does not incorporate known information about the natural and cultural resources of this area, and relies on large and misleading assumptions for its conclusions. On December 26, 2016, the Native Hawaiian Legal Corporation submitted a letter to you in which it asked that the DEIS provide answers to a number of questions. The DEIS completely avoids answering them. The DEIS fails to disclose the amount of water taken from **each** stream, omits essential maps, and glosses over impacts that have long been raised by those who know this watershed. **We ask that these deficiencies be corrected immediately and a new DEIS be re-released for another full DEIS public comment period.**

I. Diversion structures

EMI built many diversion structures on public land. If EMI no longer has the right to use public land (the no action alternative), then it will have to remove the structures it placed on public land. These diversion structures cause significant impacts. These impacts include: (a) interference with native aquatic species (blocking migration upstream as well as entrainment of larvae); (b) facilitation of mosquito breeding; (c) taking water temporarily from streams (even if the water is not removed from the ahupua‘a); (d) threatening the safety of recreational users of public land; and (f) are inappropriate aesthetic impacts in a natural environment. The DEIS fails to discuss the impact that these structures cause. Perhaps most importantly, it must assess which

of EMI's structures cause the greatest harm to native aquatic species and which ones create mosquito breeding grounds.

The DEIS acknowledges on page 4-58 that "entrainment of larvae at the diversions remains an issue and contributes to the loss of HU. Additional HU may be gained for the native stream species by decreasing entrainment at the diversion locations. Any action or modification of the diversion to decrease entrainment would increase the total restored HU without any additional water released to the stream." The DEIS fails to identify which diversion locations are causing the greatest threat to native species and fails to quantify their impact.

DLNR's 2005 Hawaii's Comprehensive Wildlife Conservation Strategy identified stream diversions and insufficient in-stream flows as a key threat to species on Maui. DLNR identified stream diversion as a threat to 'o'opu nākea, 'o'opu 'alamo'o, 'o'opu nōpili and opa'ē kala'ole. In a May 17, 2010 letter to then-BLNR Chair Laura Thielen, Robert Nishimoto, the environmental program manager for the division of aquatic resources, wrote that "native animals are missing from a number of stream sections where they should naturally exist." He also concluded: **"The removal of stream diversions and the complete restoration of stream flow would be the best possible condition for native aquatic animals."**

The DEIS fails to sufficiently acknowledge these widely accepted facts. It fails to discuss how both diversion structures themselves and the taking of water from streams creates mosquito breeding grounds. Because A&B has no legal right to take any water from public streams without a lease (or a revocable permit), the DEIS must compare the impacts created by granting the lease to not granting the lease. (Thus, for example, the comparison on page 4-102 should compare mosquito populations without diversions – and diversion structures removed – with the conditions that would exist if a lease were granted.)

It would be helpful if the DEIS included the Barrier Assessment report referenced in the Appendix A, HSHEP model report for East Maui Streams. In fact, the June 8, 2019 Assessment of the Environmental Impact of Stream Diversions on 33 East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model is missing its Appendix 1 (results of field surveys) referenced on pages 14, 42 and 62, and Appendix 2 (node and basin values) referenced on pages 45 and 56. Appendix 3 is missing as well. The information in these appendices is very important and must be included in the final EIS.

II. Streams Unaddressed by CWRM's 2018 Decision

In 1988, CWRM adopted interim in-stream flow standards for all streams within east Maui. HAR §13-169-44. The standard was whatever was flowing on June 15, 1988. In response to petitions to establish in-stream flow standards for more than two dozen streams, in June 2018, CWRM finally established substantive standards for 24 streams. That proceeding, however, did not address the water flowing in thirteen other streams that flow within the area covered by the revocable permits: Puakea Stream, Kōlea Stream, Punalu'u Stream, Ka'aiea Stream, O'opuola

Stream (Makanali tributary), Puehu Stream, Naili‘iliha‘ele Stream, Kailua Stream, Hanahana Stream (Ohanui tributary),¹ Hoalua Stream, Waipio Stream, Mokupapa Stream, and Ho‘olawa Stream (Ho‘olawa ili and Ho‘olawa nui tributaries). BLNR has no idea how much water was flowing in these thirteen streams as of June 15, 1988. Thus, the thirteen streams have no meaningful in-stream flow standards.

The DEIS fails to discuss in any detail the impact of continuing to de-water thirteen streams unaddressed by CWRM’s 2018 decision. The DEIS must do a much better job of discussing these 13 streams.

The DEIS should include the High Definition Stream Survey and the High Definition Fish Surveys referenced in the Appendix A, HSHEP model report for East Maui Streams.

To its credit, Appendix A on page 62 mentions that the lease reduces the habitat units on those streams from 588,000 square meters to 88,386 square meters. That is a huge reduction of 85%. It is unfortunate – and misleading – that this fact is not included in the discussion on pages 4-56 and 4-57 of the DEIS.

According to CWRM’s Ayron Strauch, “the diversions are generally designed to take up to about the Q40 flow, so they were probably taking, if they needed it, 100% of the Q70 flow . . .” That suggests that the ditch system completely dewateres the thirteen streams 60% of the time, leaving no water at all directly below the diversions on these 13 streams. Taking all the water from a stream 60% of the time has profound ecological consequences that the DEIS brushes over.

One of those streams, ironically, has seen too much water. For the last few years, A&B has been diverting water from Waipio and Hanehoi streams and dumping that water into Ho‘olawa stream. Excessive dumping has caused stream banks to erode and caused a hazardous condition to recreational users of the stream.

III. Water Available west of Honopou

The DEIS performs mathematical hocus pocus. Simple math from page 2-5 shows that historically 11.06 mgd of water was taken from streams west of state land (west of Honopou Stream) (135.58 mgd at Honopou Stream and 146.64 mgd at Maliko Gulch). On page 2-8, however, the DEIS suggests that only 4.37 mgd are available from the streams west of state land. That is simply not true. The figure provided on page 2-8 is premised on not taking more water because “when rainfall is high in East Maui, the ditches are fuller and there is little needed to supplement the flow.” Yet, in the same way, if BLNR limits the amount of water taken from east Maui, then A&B/EMI/Mahi Pono have 11.06 mgd of water available from the streams west of state land.

¹ Please note that in Findings of Fact 58 and 60 of the June 2018 CWRM decision, CWRM refers to the stream as “Hanahana Stream.” The Hawai‘i Board on Geographic Names, however, refers to the stream as Hanawana. <http://files.hawaii.gov/dbedt/op/gis/bgn/placenames/HBGN%20-%20Maui%20-%20Official%20May%202018.pdf>.

IV. Marine Life

Kumupono Assoc. study of East Maui: “Wai o ke Ola – He Wahi Mo‘olelo no Maui Hikina” was prepared for A&B / EMI in 2001. It provides much historic and contemporary discussion of the robust presence of marine life along east Maui coasts and longtime dependence of east Maui communities on the sea for food supplies. The connection between fresh water stream flows and algae that feeds marine life is well established.

In contrast, Appendix B and the DEIS concludes that East Maui streams flows do not affect conditions for marine life in east Maui, and that east Maui has the wrong ocean conditions to have substantial fish populations. Appendix B offers these conclusions although it includes no survey of ocean fish and measures water chemistry at just seven of 36 streams in the lease area. The conclusions of Appendix B are used throughout the DEIS to justify the “lack of impacts” from EMI’s proposed Alternative 1: diverting all the East Maui streams to the extent permitted by the 2018 CWRM D&O. The EIS needs to acknowledge that there are impacts to ocean fisheries and propose mitigation.

The EIS does not include recent studies of marine fish populations in east Maui or recent interviews with east Maui residents. Residents inform us that they have observed that the recent increase in East Maui flows has started to stimulate increased fish populations in East Maui. The EIS needs to include studies on current fish populations discuss how this trend of increasing fish populations that support traditional Hawaiian gathering practices can continue, rather than not mention that it is happening.

In addition, the EIS should specifically identify the all the projects for which Steve Dollar, Marine Research Consultants, Inc. and Sea Engineering have predicted that a project would have an adverse environmental impact. It should also list all the projects that they predicted would not have an adverse environmental impact.

V. Native and Invasive Flora and Fauna (Appendix C)

Appendix C and the DEIS assume that 140 years of EMI use and management has had no impact on the substantial loss of native flora and fauna on public lands in the Lease Area. This is offensive, and also simply not true.

This brief survey (4 days covering 33,000 acres on the ground and 1 day in the air) drive-by review of flora and fauna is entirely inadequate to inform decision makers of the impacts of the proposed action. None of the Endangered damselfly populations seen by DAR surveys in 2005-06 were seen. No plant list was included in the survey report. The survey does not refer to baseline data available from the extensive 1985 mapping of the E & W Wailuaiki stream basin area that was done as part of a Proposed Hydroelectric plant EIS (Kepler, 1985.) The Flora and Fauna survey also included the 30,000 acres of potential farm lands (referred to as the “use

area”) in the 5 day visit and did a poor job of describing impacts there. It was not clear if the gulches in the “use area” were surveyed; they often serve as habitat areas. No acoustical survey for native bats was done at either survey location.

We think it is fair to say that Sierra Club hike leaders probably know more about the specific flora and fauna conditions of the Lease Area than is found in the Appendix C survey. Section 5.2.3 of the survey reported that no reptiles or amphibians were detected, but hikers regularly encounter a very small frog at Hanawi stream near the Wailoa ditch.

In section 6.1.1 of Appendix C, the consultants conclude that under the proposed action (30 year lease) "Vegetation would remain substantially the same” in the state Lease Area. Sierra Club leaders have watched invasive species such as melastomes, job’s tears, gingers, African Tulip and other pests spread substantially through the Lease Area over the past 30 years of access hikes, while the density and variety of native species diminish. The EIS does not address what mitigations would be needed to make sure that a 30 year lease would not result in the disappearance of most native species in the 1,000 to 2,000 ft elevations in the Lease Area.

The DEIS fails to acknowledge that without active management, invasive species will take over native forests. Active management is critical. Page A-2 of Appendix C documents how much invasive species are crowding out native forests in the area that Mahi Pono/EMI wants to lease. One of the primary justifications that the Land Division offers to leasing out its land is that it does not have the resources to manage public land. If someone is going to lease public land, it should only do so if it prepares and implements a management plan that reduces the threat posed by invasive species.

The EIS should have far more detailed information before declaring that a 30 year extension of the current management style will result in “no impacts.”

Sierra Club leaders remove and report invasive plant introductions in the Lease Area to EMI and the state and have offered to participate in hunting for and eradicating various invasive aliens before they can get established. No one has followed up with our requests recently. In the 1980’s, Sierra Club and EMI teams worked together to remove invasive Banyan trees from the stream beds of the Lease Area. Current EMI leadership has not shown any interest in the public watersheds below 3000 elevation where most of their diverted streams are located in the Lease Area. The East Maui Watershed Partnership includes the Lease area lands on their maps, but only has active management of East Maui lands above 3000 elevation, which is above the Lease Area. The EIS needs to make this fact clear.

The public waters diverted by the EMI systems are the product of two factors: natural rainfall and the watershed lands that receive the rainfall and discharge it into springs and streams. The quantity and quality of future stream flows will depend upon the health of the surrounding watershed lands.

In section 6. of Appendix C, the consultants conclude that the proposed action will have no impacts because “no habitat removal or loss is proposed...”. The EIS ignores the well-documented fact that dewatered streams over time lead to the decimation of native ecosystems and flora and fauna. The EIS proposes no mitigations to improve watershed health other than some mechanisms to prevent introduction of more invasive species on equipment or supplies.

The Appendix C survey provides no guidance for any restoration activities in the Lease Area, which is widely done in EIS documents that are involved with projects, like this one, that will, by law, trigger future management plans.

Section 6.2 of Appendix C concludes that the No Action alternative (no lease awarded) would mean that it would likely not be viable for EMI to maintain the ditch system. The EIS offers no substantial discussion or analyses of others such as County or State maintaining portions of the ditch system for much reduced level of diversion. The idea is simply dismissed as “too speculative” at this time, although the Maui Board of Water Supply has issued a report after investigating the topic.

Section 6.3 concludes that the Reduced Water alternative (alternative 2) would result in more ditch maintenance required and “more human activity in area and greater chance of potential for negative impacts.” This section also concludes (with no proof offered) that increased water flows in the stream would likely have very little impact on native land based flora and fauna and that impacts on aquatic fauna (damsel flies, etc) would vary by stream. The EIS offers no evidence that either of these conclusions is true, yet they are offered as a rationale to decision makers to support the Alternative 1 lease.

Appendix C refers to a future Management Plan for the Lease area that will be done by the State of Hawai‘i for the lease lands as part of any future lease agreement. The lease requirements found in HRS 171-58(e) specify that A&B/Mahi Pono need to jointly prepare a management plan with the State:

(e) Any new lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan.

The Appendix C - “Assessment of Terrestrial Flora and Fauna” made absolutely no reference to any need for restoration or management of the public lands in its analyses or recommendations. It seems unlikely that any DEIS considering the impacts of a longterm action can effectively evaluate and mitigate those impacts if the impacts are not clearly quantified in EIS.

Section 6.5 discusses alternative ownership/management of the ditch system and lease area- and concludes that such management “would have effects identical to those described in “proposed Action.” on Terrestrial Flora-Fauna. The DEIS offers no analyses of increased investment in

watershed management that could come with a new “ownership” model.

Section 6.6 dismisses the greater public access alternative (smaller lease area) and concludes that greater access would impact flora and introduce more alien species and impact habitat of native birds. The DEIS offers no analyses of increased access permitting greater restoration / management activities in the watershed lands as has been the case in various areas on Maui that manage public access.

Section 7 offers Avoidance & Minimization measures such as:

- Biological monitor during maintenance in waterfall /cliffside areas
- Wash and inspect equipment before maintenance
- inspect any materials used for maintenance
- monitor ESA damselflies- work with USFWS
- training for onsite staff to recognize endangered species
- sensitivity to i'iwi nests during tree trimming
- use of barbless strand for top wire of fences to avoid bat injuries

While these would be a step forward from current conditions, there is no accountability for these practices actually being employed. Take the example of fencing mentioned. Thousands of acres of Mahi Pono land have recently been fenced, some of which has stands of trees that could serve as potential endangered bat habitat. All of the fencing observed has barbed wire on its top strand. Will all this be changed only if the lease is granted?

VI. Hiking

Why does the DEIS assume that the leaseholder should retain the right to determine who is allowed to hike on public land? It is unfortunate that the comments from the Maui Island Advisory Council to Na Ala Hele were essentially disregarded.

The EIS should include an inventory of roads and trails in the Ko‘olau Forest Reserve. The Highways Act protects public right-of-way on roads and trails owned by the state. When the Ko‘olau forest reserve was created, all roads and trails in the forest reserve became protected rights-of-way. The EIS needs to show the protected roads and trails in the Ko‘olau Forest Reserve. HRS §171-35 requires leases to protect rights-of-way and access to other public lands. *See also Robello v. Cnty. of Maui*, 19 Haw. 168 (1908)

In its December 19, 2016 letter, the Division of Forestry and Wildlife states: “Thus the Division recommends that the areas to be conveyed for a water license be done so through a land agreement that is limited to the infrastructure required for maintenance and conveyance of water, and that any terms of any agreement established for the delivery of water ensure unrestricted public access to the reserves and any state owned roads and trails.” This means that public access to the trails is not at the whim of the leaseholder. The DEIS must reflect this fact.

VII. Easement

On page 3-6 of the DEIS, there is an acknowledgement of the 1938 agreement – a copy of which should be reproduced in an appendix. That 1938 agreement allows DLNR to deliver water to the county without having to purchase the ditch system from anyone – and regardless of whether a lease is granted or not.

The EIS has no discussion of the fact that EMI controls the 4 levels of ditch system west of lease area, which are connected to the East Maui ditch system, but not affected by the lease decision.

VIII. Cultural Impact Assessment (Appendix F)

The EIS must fully acknowledge the impact that past and proposed reduced stream flows have had on the native stream life and marine life that is so directly connected with the ability of Native Hawaiians to engage in traditional cultural practice of fishing and gathering in East Maui.

Appendix F, the Cultural Impact Assessment (CIA), concludes that as long as stream flow standards are met in the east Maui streams subject to the 2018 Water Commission decision, all other streams can be diverted with no impacts to traditional Hawaiian cultural practices. It also concludes that the east Maui coasts do not have reefs and therefore do not support related marine species. The conclusion does not reflect marine life and streamlife studies from east Maui, or generational knowledge in the statements of numerous east Maui kama'āina included in Appendix F(i). Information in kama'āina interviews mentions the importance of stream flows to the abundance of ocean fisheries and related cultural practices of fishing and gathering. Hawaiian cultural users whose interviews are in the CIA agree: increased stream flows are needed to support stream and marine life in enough abundance to allow traditional gathering from both streams and ocean coastlines.

The EIS also needs to evaluate the cultural impacts of increasing the amount of water diverted from many streams compared to the amount diverted the past two years.

IX. Hawaiian Home Lands

HAR §11-200-16 provides:

The environmental impact statement shall contain an explanation of the environmental consequences of the proposed action. The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, a statement shall include responsible opposing views, if any, on

significant environmental issues raised by the proposal.

The current DEIS contains no specific information regarding the water reservation amounts from the East Maui lease area needed by DHHL. **This information is now available and was publicly offered by DHHL staff at the Oct 9, 2019 BLNR meeting.** These specific legally protected water reservations should be included in the EIS, and Mahi Pono's water use plans must be adjusted accordingly to reflect this amount, in order for the public and agency comment process to be based upon accurate information. The DEIS also assumes in the Executive Summary that Mahi Pono can use the east Maui water until the time that DHHL needs its reservation. A discussion of whether it is legal for A&B /Mahi Pono to assume that the DHHL "water reservation" can be utilized by Mahi Pono until it is "needed by DHHL" should also be included in the EIS. There is no indication in the DEIS how the MP Farm Plan will be adjusted to accommodate for the 11.5 mgd of east Maui Water that DHHL is reserving. The EIS should plainly discuss this. If this would be based upon a need for more water over the first few years of planting and less water when crops are established, using regenerative agricultural methods, as was envisioned in the 2018 CWRM D&O:

115. The estimated water requirements will change not only because some potential partners and lessees are expected to rotate multiple crops that could potentially have different crop coefficients but also because water requirements could change significantly through the use of regenerative agricultural methods.

If Mahi Pono Water demand is expected to decrease over the years, as suggested by the CWRM 2018 review, a timetable for restoration of non-IIIF streams in the Huelo Lease area should also be discussed in the EIS.

X. Agricultural and Related Economic Impacts (Appendix I)

The EIS should acknowledge that Mahi Pono has no track record of successful farming under Maui conditions.

A&B's SEC filings inform their shareholders of the risk that plans for diversified farming on their Maui lands may not work out, even given the company's long history of farming. A&B's 2015 SEC filing states:

The Company is currently evaluating several categories of replacement agricultural activities in the transition to the diversified model, including but not limited to energy crops, agroforestry, grass finished livestock operations, diversified food crops/ agricultural park, and orchard crops. **There is no assurance that the Company's replacement agricultural activities will be economically feasible or improve the Agribusiness segment's operating results.**

The EIS needs to provide the same disclaimer, and not predicate the entire success of Mahi Pono

farming operations on how much east Maui water is sent to Central Maui.

The DEIS asserts that Mahi Pono needs a long-term lease in order to make its investment in agriculture. Does Mahi Pono not understand that even with a long-term lease, CWRM could amend the in-stream flow standards and reduce the amount of water flowing to central Maui? Does Mahi Pono understand that one of the reasons for studying West and East Wailuaiki is so that CWRM can understand the impact of diversions and if necessary order more water to be restored for the health of the streams?

The EIS needs to provide accurate information about the benefits of Central Maui farming. The numbers provided for proposed Mahi Pono profits and past performances of HC&C sugar do not seem logical: “Mahi Pono farm plan is projected to generate more than 338 pounds per year of crops, generating \$155.9 million per year in annual food sales and \$329.5 million per year in combined direct and indirect sales.” (Executive Summary, p.v.). This would mean each pound of crop brought a return of \$461,242.

Table 6 in Appendix I lists “recent sugar” payroll of \$68,000,000 a year. HC&S had 675 workers when they announced that sugar would shut down in 2016. Did each of those workers earn \$100,740 a year (\$68 mil divided by 675)? That seems highly unlikely. The potential “recent sugar profits” presented in Table 6 of Appendix I also needs additional information. A&B’s SEC filings (10K reports) show a very different range of “profits” from 2009 to 2015, the most recent era of sugar growing. Only 4 of those 7 years did the sugar operations show a profit (2010-2013) The other three years showed sizable losses. Only one year (2011) had a profit of \$22 mil. The average of the 4 profitable years was \$14. 9 mil. The figures in the EIS should reflect accurate amounts, not cherry pick one promising year. This incorrect information must be fixed in a new DEIS.

Appendix I assumes that East Maui now has plenty of water due to the 2018 CWRM Decision. It also assumes that dry, windy central Maui is the best place for crops to insure food security for Maui’s future, thereby rationalizes without information that all available east Maui stream water should be sent there to support agriculture. The EIS needs to have an updated analyses of the farming potential of the east Maui area. The current analyses in Appendix I that concludes only 44 acres is available for kalo growing and 35 acres for truck farming in all of East Maui. These figures are based only on information from the communities that Native Hawaiian Legal Corp represented during the East Maui IIFS petition. There is far more land available for both kalo and farming in east Maui in the Huelo lease area.

The EIS incorrectly concludes that no additional stream water would be needed in all of east Maui, based upon the limited information available from the CWRM contested case. That case did not address a dozen other streams. The many communities of the Huelo lease area have wide swarths of fertile lands and no public water supply, resulting in unmet water needs by both Native Hawaiian and non Hawaiian farmers.

XI. Segmentation

A&B's 2015 10K statement acknowledges that the the four state lease areas supplied "approximately 58 percent of the irrigation water used by HC&S" and "A&B also holds rights to an irrigation system in West Maui, which provided approximately 15 percent of the irrigation water used by HC&S over the last ten years." This would indicate that 27 % of irrigation water came from A&B wells.

The EIS needs to include a list and map of the A&B/Mahi Pono wells available to help irrigate the Mahi Pono fields and the latest chloride tests and pumping abilities of those wells.

The EIS states that Mahi Pono's farm plan will use less water than the HC&S sugar operations and provides elaborate tables in Appendix I. The Mahi Pono Farm Plan is one plan, which includes around 34,000 acres irrigated by both east Maui and west Maui stream waters.

The EIS content rules do not allow for segmentation of separate parts of the same project. The 4,000 acres of fields irrigated by West Maui Water should be included in the overall analyses of how much water is needed from what source to have a viable Mahi Pono Farm Plan.

A new DEIS needs to clearly state the overall Mahi Pono Farm Plan and indicate what amounts and proportions of water for the farm plan will come from (a) the four licensed area in east Maui, (b) the area west of the licensed area that feeds the EMI ditch system streams, (c) West Maui streams and (d) Mahi Pono wells.



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September 3, 2021

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Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'ānae, Honomanū and Huelo License Areas

Dear Ms. Marti Townsend:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'ānae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Thank you for the opportunity to comment on the draft environmental impact statement (DEIS) submitted by Alexander & Baldwin, Inc. and East Maui Irrigation Co. Ltd (collectively herein A&B) for the proposed leased areas of East Maui.*

Response 1: Thank you for participating in the Draft EIS review process and providing comments in response to the subject EIS. We offer responses to your substantive comments below.

Comment 2: *This DEIS is deficient. As detailed in our comments below, this document fails to meet the standards for an environmental impact statement.*

Response 2: We respectfully disagree with your comment that the Draft EIS is deficient as the Draft EIS fully complies with all relevant requirements, including the content requirements set forth in HAR § 11-200-16 and 11-200-17, and included a "Content Checklist" identifying each element under HAR § 11-200-17 and where within the text of the Draft EIS information on each

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particular element could be found. Please note that the Content Checklist has been updated based on updated discussions and additions added to the Final EIS as shown subsequently behind the front cover.

Comment 3: *It does not incorporate known information about the natural and cultural resources of this area, and relies on large and misleading assumptions for its conclusions.*

Response 3: We respectfully disagree with your comment that the Draft EIS does not incorporate known information about the natural and cultural resources of East Maui as Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures) provides a comprehensive description and impact analysis of the Proposed Action on the License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered existing conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies where no significant effects are expected, and where there may be impacts.

The Draft EIS also included and relied upon nine technical studies that were prepared for the EIS (Appendix A, Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP Model); Appendix B, East Maui Irrigation Assessment of Streams and the Ocean; Appendix C, Terrestrial Flora and Fauna Technical Report; Appendix D, Historical Structure Assessment; Appendix E, Archaeological Literature Review and Field Inspection; Appendix F, Cultural Impact Assessment; Appendix G, Social Impact Assessment; Appendix H, Economic and Fiscal Impact Study; and Appendix I, Agricultural and Related Economic Impacts).

Comment 4: *On December 26, 2016, the Native Hawaiian Legal Corporation submitted a letter to you in which it asked that the DEIS provide answers to a number of questions. The DEIS completely avoids answering them. The DEIS fails to disclose the amount of water taken from each stream, omits essential maps, and glosses over impacts that have long been raised by those who know this watershed. We ask that these deficiencies be corrected immediately and a new DEIS be re-released for another full DEIS public comment period.*

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Response 4: We acknowledge that the Native Hawaiian Legal Corporation (NHLC) submitted a letter on December 26, 2016 during the early consultation phase of the EIS process. We respectfully disagree with your comment that the Draft EIS completely avoids answering the questions in the NHLC letter. They were addressed and responded to as shown in Appendix J of the Draft EIS. As noted in the response to NHLC's comment letter, NHLC's comments and concerns were considered in the preparation of the Draft EIS with regard to meeting all relevant requirements, including the content requirements prescribed in HAR § 11-200-17.

Regarding your comment that the Draft EIS fails to disclose the amount of water taken from each stream, please note that EMI has gauges located in several locations across the License Area. These gauges measure the flow in the ditches only. It is not feasible to measure flow in the streams, as there are limited areas that contain the necessary control points to accurately measure streamflow. Similarly, it is not feasible to provide total diversion amounts by License Area, i.e. diversions amounts only from Huelo, diversion amounts only from Nāhiku, etc. The USGS used to have gauges at each of the portions of the License Area boundaries, those gauges were not on individual streams, they were in ditches at each portion of the License Area boundary. However, due to USGS cost cutting, several of those gauges were removed. It is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the Commission on Water Resource Management (CWRM) to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. In addition, proper gauging would involve some form of stream alteration, such as a weir in order to properly measure stream flow. EMI has never conducted stream gauging as that lays within the expertise the CWRM and the USGS.

As noted in the Findings of Fact, Conclusions of Law, and Decision and Order in Case CCH-MA13-01 (CWRM D&O), the measurements EMI takes are of ditch flow at Honopou Stream and Māliko Gulch, however, for the purpose of measuring the aggregate flow from entire License Area, the Honopou Stream measurement reading was used.

As discussed in Draft EIS Section 2.1.2 (East Maui/License Area) and 2.1.4 (Central Maui Field System), the long-term average delivery of water by the EMI Aqueduct System up until 1986 had been approximately 165 mgd (prior to any use of water by the MDWS or HC&S on the agricultural fields). This measurement was taken at Māliko Gulch. Under the Proposed Action, it is estimated that approximately 87.95 mgd will be diverted from the License Area, and an additional 4.37 mgd will be diverted in between Honopou Stream and Māliko Gulch to convey water to the agricultural fields in Central Maui and supply MDWS for Upcountry Maui. Thus, an estimated total of approximately 92.32 mgd would be conveyed to supply the MDWS for users

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in Upcountry Maui and the Central Maui agricultural fields. The Proposed Action will also ensure the continued delivery of water for the Nāhiku community, which, through the MDWS, draws water from EMI's land through EMI's West Makapipi Tunnel 2 (Well No. 4806-07), a development tunnel located directly adjacent to the Koolau Ditch.

Your comment stating that the Draft EIS omits essential maps is unclear as you do not specify which type of maps were omitted that you consider essential. Please note that the Draft EIS provides over 50 figures. Moreover, the Final EIS includes some additional figures in response to comments on the Draft EIS as shown pages 2-15, 2-26, 2-32, 3-6, 3-16, 4-144, 4-146, 4-149, and 5-39 of the Final EIS. Additional figures to the Final EIS include, but are not limited to, the MDWS Upcountry Service Area Map, MDWS Nāhiku Service Area Map, Potential Sites for Well Development Analysis Map, Mapped Roads and Trails within the License Area Map, Underground Injection Control Program Flowchart, Historical Intensive Agricultural in East Maui Map, and various others as shown pages 2-15, 2-26, 2-32, 3-6, 3-16, 4-144, 4-146, 4-149, and 5-39 of the Final EIS.

We respectfully disagree with your comment that the Draft EIS glosses over impacts that have long been raised by those who know the watershed. As noted in Response #3 above, Chapter 4 provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measures, which have also been updated in the Final EIS. The analysis in the EIS also incorporates the information gathered through consultation on the EIS. Chapter 9 of the EIS details the consultation efforts that were undertaken for the EIS.

The Social Impact Assessment (SIA), provided as Appendix G of the Draft EIS, also obtained input from several community members, many of whom have direct and long-term experience with the streams in the subject area. Moreover, the Cultural Impact Assessment (CIA) provided as Draft EIS Appendix F, includes input from interviewees, including additional interviews conducted in response to comments on the Draft EIS, as well as numerous declarations made during the CWRM contested case proceedings.

Please note that as mentioned in Response #2 that the Draft EIS fully complies with all relevant requirements, including the content requirements set forth in HAR § 11-200-16 and 11-200-17, and includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement. The EIS includes responses to all of the comment letters received regarding the Draft EIS and edits to the document have been made accordingly. Hence, we believe that the EIS is not deficient and a second Draft EIS does not need to be published.

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Comment 5: Diversion structures

EMI built many diversion structures on public land. If EMI no longer has the right to use public land (the no action alternative), then it will have to remove the structures it placed on public land.

Response 5: We disagree with your comment that under the No Action alternative, the diversion structures on public land would have to be removed and that EMI would no longer have a right to use public lands for the EMI Aqueduct System. The Collection Area as defined in Section 1.3.1 of the Draft EIS for the EMI Aqueduct System covers approximately 50,000 acres, of which 33,000 acres are owned by the State (the License Area) and 17,000 acres are privately owned by Mahi Pono and/or EMI. See Draft EIS Figure 1-1 (EMI Aqueduct System Collection Area). The EMI Aqueduct System spans both the State-owned and Mahi Pono/EMI owned lands and is an integrated system. In 1938, the Territory (now the State) of Hawai‘i and EMI entered into an agreement (the “1938 Agreement”) to facilitate and govern the continued auction of long term water licenses of the State-owned portions of the Collections Area so that, regardless of who the successful bidder at auction may be, the EMI Aqueduct System could continue to be operated across both the State-owned and Mahi Pono/EMI owned lands by EMI, the licensee (if not EMI), the State, or both, as the case may be.

To that end, the State and EMI each granted to the other “perpetual” easements to those portions of the EMI Aqueduct System located on the other’s land. The duration of these “perpetual” easements was stipulated to last until the termination of the 1938 Agreement. The 1938 Agreement is still in place and valid. The State may, but is not obligated to, terminate the 1938 Agreement only if the licenses are offered at auction but EMI fails to bid. EMI may, but is not obligated to, terminate the 1938 Agreement if the State fails to offer the licenses at auction. Thus, if no license is offered at auction, the 1938 Agreement provides that EMI may still collect water derived from the EMI-owned portions of the Collection Area and, utilizing the easement granted to it in the 1938 Agreement, transport it across the entirety of the EMI Aqueduct System that traverse State lands. Please note that Section 3.3 of the Final EIS regarding the No Action alternative has expanded its discussion regarding this matter as shown on pages 3-24 to 3-25. A copy of the 1938 Agreement is included as Appendix R to the Final EIS.

Comment 6: *These diversion structures cause significant impacts. These impacts include: (a) interference with native aquatic species (blocking migration upstream as well as entrainment of larvae); (b) facilitation of mosquito breeding; (c) taking water temporarily from streams (even if the water is not removed from the ahupua‘a); (d) threatening the safety of recreational users of public land; and (f) are inappropriate aesthetic impacts in a natural environment. The DEIS fails to discuss the impact that these structures cause. Perhaps most importantly, it must assess which*

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of EMI's structures cause the greatest harm to native aquatic species and which ones create mosquito breeding grounds.

Response 6: Diversion structures come in many shapes and sizes and it is incorrect to assume that all diversion structures cause significant impacts. Some diversions do have the potential to cause the impacts listed above in certain circumstances. As it specifically pertains to native species habitat: as long as the diversion does not divert water, change the natural channel pathway, create a barrier, and impound water, then the impacts will be limited as discussed in Appendix A. However, it would be erroneous to assume that all diversion structures cause the impacts that you cite. Diversions come in many different shapes and designs, as discussed in the Historic Structure Assessment provided as Appendix D of the Draft EIS. CWRM will be looking at how specific diversions should be modified in the course of overseeing the implementation of its CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O for the Interim Instream Flow Standards (IIFS) proceedings on the East Maui streams. CWRM ordered in relevant part:

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

See CWRM D&O at p. 269.

Moreover, CWRM took aesthetic values and recreational activities into account when setting the IIFS. This is reflected in Findings of Fact (FOF) made by CWRM in the CWRM D&O as follows:

70. *When setting IIFS, the information that is considered in connection with aesthetic values such as waterfalls and scenic waterways is the presence of scenic views, waterfalls and whether there is tourism in the area.*

and

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71. *Aesthetics is a multi-sensory experience related to an individual's perception of beauty. As a subjective value, aesthetics cannot be quantitatively determined. Elements, such as waterfalls and cascading plunge pools that appeal to an observer's visual and auditory senses.*

CWRM D&O, FOF 70, 71.

Numerous other FOF addressed the aesthetic values of the specific streams. With respect to recreational matters, CWRM found:

66. *When setting IIFS, the information that is considered in connection with the instream use of outdoor recreation activities is the presence of opportunities for swimming, nature study, fishing, boating, and parks.*

CWRM D&O, FOF 66.

67. *Streams are often utilized for water-based activities such as boating, fishing, and swimming, while offering added value to land-based activities such as camping, hiking, and hunting.*

CWRM D&O, FOF 67.

Please note that the diversions closer to the stream mouth have more impact than those farther from the stream mouth, some designs can entrain larvae or block passage more than other designs, and the amount of water passing is also important when quantifying impacts. The *Assessment of the Environmental Impact of Stream Diversions on 33 East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model* (May 27, 2019) prepared by Trutta Environmental Solutions, Inc. addresses all of these factors on a diversion by diversion basis.

The section entitled, "Diversion Assessments" of Appendix A of the EIS regarding the HSHEP model provides that entrainment is directly related to the proportion of water removed by a diversion. Section 4.2.1 of the Draft EIS discuss how both diversion structures themselves and the taking of water from streams can lead to entrainment, decreasing potential habitat units (HU).

However, generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As mentioned above and discussed in Appendix A, as long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier

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to movement, then the physical structure will have a negligible impact on native species habitat at best.

Conversely, meeting the IIFS at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

For example, Diversion K-15 on West Kopili‘ula Stream was closed with 100% of the water flowing through the bypass and continuing downstream (See Figure 12 of Appendix A of the EIS). However, the physical diversion structure was still present. Immediately upstream of this diversion, numerous native stream animals were observed. 409 ‘ōpae kala‘ole (*Atyioda bisulcata*) and 5 ‘o‘opu alamo‘o (*Lentipes concolor*) were counted in the stream above the diversion in less than 200 m² of habitat sampled for the study included as Appendix A. Even though the physical diversion structure still exists, the stream flowed downstream uninterrupted and no entrainment or barrier to movement is present. The native stream animals observed were using the habitat immediately upstream of the diversion. Because these animals climb upstream from the ocean, this shows that the physical diversion structure did not prevent the animals from using the area. This being said, if the diversion structure was partially removed to make sure that the bypass opening would not be blocked by debris, then it would almost guarantee that this physical structure would continue to have no or very minor impact on native stream species habitat. Please note that Section 4.2.1 of the Final EIS has been updated to include an expanded discussion regarding stream habitat and native species impacts related to entrainment as shown on pages 4-63 to 4-67.

In summary, altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns. In summary, diversions come in many configurations and sizes, and will have to be assessed individually. However, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat. Exact structure modification will need to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts. Also note that the physical act of removing diversion

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structures could generate adverse impacts in certain circumstances that would not occur if the structures were left in place.

Regarding your comment that diversion structures are creating breeding sites for mosquitoes, it is possible that diversion structures could provide breeding sites for mosquitos. Elimination of areas of the structure that cause ponding of water should remove this possibility. Again, complete elimination of the structure is one way to accomplish the goal, but complete removal is not required to eliminate potential mosquito breeding habitat. Please note that the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. Unfortunately, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed.

While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. Anecdotal observations made by Trutta staff members, support the continued presence of Culex mosquitoes under a wide range of stream flows as they reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i. Please note that Section 4.2.1 of the Final EIS has been updated to include the above discussions related to the Culex mosquito as shown on pages 4-58 to 4-61.

Comment 7: *The DEIS acknowledges on page 4-58 that “entrainment of larvae at the diversions remains an issue and contributes to the loss of HU. Additional HU may be gained for the native*

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stream species by decreasing entrainment at the diversion locations. Any action or modification of the diversion to decrease entrainment would increase the total restored HU without any additional water released to the stream.” The DEIS fails to identify which diversion locations are causing the greatest threat to native species and fails to quantify their impact.

Response 7: Please note that the HSHEP model focuses on changes in instream habitat, entrainment, or barriers to passage for these migratory native stream species with respect to modifications of the stream environment. In the case of the East Maui streams covered by the Draft EIS, the primary impact to HU is streamflow diversion. While the HSHEP model does account for changes in HU with respect to instream structures, these are minuscule in comparison to the loss of HU in dewatered stream segments and the entrainment of animals into the EMI Aqueduct System. Hence, the HSHEP model clearly demonstrates the link between stream diversion and native stream species habitat. The model quantifies changes to habitat, entrainment and barrier to passage to determine the impact of various management scenarios as presented in Appendix A and summarized in Section 4.2.1 of the EIS. Thus, the primary mitigation measure is flow restoration and the HSHEP modeling intent was to quantify the flow restoration effect on the native stream species. Thus, as it relates to streamflow, the results of HSHEP model in Appendix A and summarized in Section 4.2.1 of the EIS presents mitigation measures through various stream management scenarios that would restore native stream life by increasing HU through various streamflow restoration targets. However, please note that not every scenario was analyzed or discussed due to a large number of permutations resulting from the large number of diversions (approximately 388 separate intakes) and modifications possible.

With that caveat stated, some general guiding concepts can be concluded.

With respect to diversion amount:

Regardless of the way the water is diverted, greater percentages of total streamflow diverted generally result in lower amounts of instream habitat for native stream species.

With respect to diversion location:

When comparing the location of a diversion, diverting comparable amounts of water at higher elevation diversions is less damaging to instream habitat for native stream species than diverting that water at lower elevation diversions. In this case, as the diversion occurs further upstream in the stream, more natural stream flow recovery plus any water passing the diversion result in more instream habitat with unobstructed connection (no entrainment or passage issues) to the ocean.

With respect to a single diversion in comparison to multiple diversions:

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Similar to the previous statement, a single diversion at the upstream most diversion location capturing X amount of stream flow will result in more instream habitat than multiple diversions throughout the stream diverting the same amount of stream flow in total (sum of multiple diversion = X). The lower amount of total habitat under the partial water diversion at multiple diversions is the result of the compounding impact of entrainment/passage barriers at each division.

With respect to modifications of the diversion for improved passage and decreased entrainment:

1. Improvements in diversion passage result in more suitable habitat at most flow amounts.
2. At lower flow restoration amounts, modifications to improve passage result in greater gains in suitable habitat than at higher flow restoration amounts.

In general, diversion locations on larger streams that are located nearest to the stream mouth have the greatest impact on stream animal habitat. But this is a scenario-based question, because the marginal gain from a unit of water released at a specific location needs to be compared with the marginal gain for a unit of water at a different location. For example, Diversion A has a greater impact than Diversion B for the first unit of water going from dry to 1 cfs in the stream. But the second unit of water will have a greater impact on Diversion B going from dry to 1 cfs in the stream, than at Diversion A going from 1 cfs to 2 cfs. All of this data for the scenarios is supplied in the appendices of the report included as Appendix A of the EIS.

Comment 8: *DLNR's 2005 Hawaii's Comprehensive Wildlife Conservation Strategy identified stream diversions and insufficient in-stream flows as a key threat to species on Maui. DLNR identified stream diversion as a threat to 'o'opu nākea, 'o'opu 'alamo'o, 'o'opu nōpili and opa'ē kala'ole. In a May 17, 2010 letter to then-BLNR Chair Laura Thielen, Robert Nishimoto, the environmental program manager for the division of aquatic resources, wrote that "native animals are missing from a number of stream sections where they should naturally exist." He also concluded: **"The removal of stream diversions and the complete restoration of stream flow would be the best possible condition for native aquatic animals."***

The DEIS fails to sufficiently acknowledge these widely accepted facts. It fails to discuss how both diversion structures themselves and the taking of water from streams creates mosquito breeding grounds. Because A&B has no legal right to take any water from public streams without a lease (or a revocable permit), the DEIS must compare the impacts created by granting the lease to not granting the lease. (Thus, for example, the comparison on page 4-102 should compare mosquito populations without diversions – and diversion structures removed – with the conditions that would exist if a lease were granted.)

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Response 8: The 2005 Hawai‘i Comprehensive Wildlife Conservation Strategy addressed two primary actions that would benefit the native amphidromous stream species:

- Decrease in number of stream diversions and channelized streams; and
- Work with CWRM to ensure net increase in number of streams with biological integrity and Instream Flow Standards sufficient to sustain viable native fish and invertebrate populations.

Please note that the HSHEP model included all of the stream species designated as species-of-concern (eight species) in the 2005 Hawai‘i Comprehensive Wildlife Conservation Strategy, including the four species mentioned above in Comment #8.

The flow restoration scenarios presented in Section 4.2.1 of the Draft EIS decrease the number and amount of stream diversions and apply the IIFS set by the CWRM D&O to improve native stream species habitat. In particular, as discussed in Section 1.3.4 of the Draft EIS, the CWRM D&O significantly reduces the amount of water that can be diverted for offstream uses relative to the capacity and use of the EMI Aqueduct System from when sugar was being cultivated. Ten streams were ordered to have no diversions at all (one of which, Waiokamilo, had stream flow fully restored in 2007) (referred to as “Fully Restored Streams” in Figure 1-3), five were required to return 64% of the median base flow (BFQ₅₀) in the stream at all times (referred to as “Habitat Streams” in Figure 1-3), and seven were required to have 20% of BFQ₅₀ in the stream at all times (referred to as “Connectivity Streams” in Figure 1-3). Thus, the flow restoration scenarios follow actions recommended by the 2005 Hawai‘i Comprehensive Wildlife Conservation Strategy.

Moreover, notwithstanding the statement you attributed to Mr. Nishimoto, the complete removal of all diversion structures is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis, to prevent or mitigate impacts. This point is addressed in more detail above in Response #6.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat. Thus, an increase in habitat was predicted to occur at diverted flows.

As discussed in Response #6 above, although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still

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exist under any streamflow scenario. Second, Hawaiian streams are naturally flashy (i.e., they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies regarding controlling introduced poecilid fishes (e.g., guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. Unfortunately, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams we surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed.

While the reactions of poecilid fishes are not a perfect analog for *Culex* mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the *Culex* mosquito (*Culex quinquefasciatus*) is established. Anecdotal observations made by Trutta staff members, support the continued presence of *Culex* mosquitoes under a wide range of stream flows as they reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i. Please note that Section 4.2.1 of the Final EIS has been updated to include the above discussions related to the *Culex* mosquito as shown on pages 4-58 to 4-61.

With respect to your comment that the EIS must compare the impacts created by granting the Water Lease to not granting the Water Lease, as discussed above in Response #5 and explained in Section 3.3 of the EIS, the EIS considers the No Action alternative where no Water Lease is issued. The impacts of the No Action alternative are addressed in Section 3.3. of the EIS. Similarly, the HSHEP model (Appendix A) also modeled the No Action alternative or "30% remaining flow diversion" alternative (the HSHEP model also provided an analysis of the "Natural Condition" scenario where all diversions were modeled as closed with no water diversions and no impact on passage or entrainment of animals.

Comment 9: *It would be helpful if the DEIS included the Barrier Assessment report referenced in the Appendix A, HSHEP model report for East Maui Streams. In fact, the June 8, 2019 Assessment of the Environmental Impact of Stream Diversions on 33 East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model is missing its Appendix 1 (results of field surveys) referenced on pages 14, 42 and 62, and Appendix 2 (node and basin values) referenced on pages 45 and 56. Appendix 3 is missing as well. The information in these appendices is very important and must be included in the final EIS.*

Response 9: Please note that the "Barrier Assessment" you refer to is included in the field survey information in Appendix 1 of Appendix A, and we acknowledge that the appendices to Appendix A were not included in the Draft EIS. All of the appendices are included in the Final

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EIS. Please note that the barrier assessments are included in the sections entitled “Diversion Description” in Appendix 1. These discussions, which were done for each one of the 35 diversion locations studied in the HSHEP model, addressing the types of diversions and their impacts on habitat, entrainment and passage.

Comment 10: Streams Unaddressed by CWRM’s 2018 Decision

In 1988, CWRM adopted interim in-stream flow standards for all streams within east Maui. HAR§13-169-44. The standard was whatever was flowing on June 15, 1988. In response to petitions to establish in-stream flow standards for more than two dozen streams, in June 2018, CWRM finally established substantive standards for 24 streams. That proceeding, however, did not address the water flowing in thirteen other streams that flow within the area covered by the revocable permits: Puakea Stream, Kōlea Stream, Punalu‘u Stream, Ka‘aiea Stream, O‘opuola Stream (Makanali tributary), Puehu Stream, Naili‘iliha‘ele Stream, Kailua Stream, Hanahana Stream (Ohanui tributary),¹ Hoalua Stream, Waipio Stream, Mokupapa Stream, and Ho‘olawa Stream (Ho‘olawa ili and Ho‘olawa nui tributaries). BLNR has no idea how much water was flowing in these thirteen streams as of June 15, 1988. Thus, the thirteen streams have no meaningful in-stream flow standards.

[Footnote 1] Please note that in Findings of Fact 58 and 60 of the June 2018 CWRM decision, CWRM refers to the stream as "Hanahana Stream." The Hawai‘i Board on Geographic Names, however, refers to the stream as Hanawana.

<http://files.hawaii.gov/dbedt/opigis/bgn/placenames/HBGN%20-%20Maui%20-%20Official%20May%202018.pdf>

Response 10: Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

While the CWRM D&O did not set IIFS for 12 streams within the License Area that are diverted by the EMI Aqueduct System because those streams were not included in the petitions filed by NHLC on behalf of Nā Moku, the CWRM D&O did take those streams into account. CWRM D&O at ii. Moreover, while 12 diverted License Area streams were not assessed pursuant to specific petitions to establish IIFS, those streams are subject to the 1988 IIFS set for the East Maui streams, as you noted. We cannot opine on whether the status quo IIFS is "meaningful" because we do not understand what is meant by that comment. However, please note that the CWRM, as is evident from its website, both from its own research and in conjunction with USGS, has information on the License Area streams, including the non-petitioned streams,

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which information is accessible to the BLNR. Furthermore, under the revocable permits, annual reports, and now quarterly reports, are submitted by EMI to the BLNR, which identify the total amount of water being diverted from License Area measured at Honopou, i.e. water from both petitioned streams and non-petitioned streams. As reported in the third quarter report submitted by EMI to BLNR for the year 2020, the average year to date amount of water diverted from the License Area as measured at Honopou was 23.2 mgd. In 1988, the total amount of water diverted from the License Area as measured at Honopou was approximately 207 mgd. This number is approximately nine times higher than the average amount of water taken from the License Area as of the third quarter in 2020. EMI has not constructed any new diversions or expanded the existing diversion structures in the non-petitioned streams in the years since the establishment of the IIFS in 1988. Thus, it is safe to assume that the IIFS is being met for each of the non-petitioned streams.

Your comment that the CWRM D&O refers to Hanahana Stream but that the correct name is Hanawana Stream is noted, however, the link provided in your comment does not work. Several places in the EIS note the CWRM D&O reference and that Hanahana Stream is also known as Hanawana Stream, including on page 1-4 and Tables 1-2 and 1-3 of the Draft EIS.

Comment 11: *The DEIS fails to discuss in any detail the impact of continuing to de-water thirteen streams unaddressed by CWRM's 2018 decision. The DEIS must do a much better job of discussing these 13 streams.*

Response 11: As noted in Response #10, there are 12 non-petitioned within the License Area that are or can be diverted by the EMI Aqueduct System. All of the diverted or potentially diverted streams within the License Area were included as a part of the overall analysis of the EIS and associated technical studies. The EIS addresses all streams within the License Area. Within Appendix A, the non-petitioned streams referred to in your comments *were* analyzed using the HSHEP model to assess changes in native amphidromous stream animal HU with respect to stream diversions which is summarized in Section 4.2.1 of the EIS in the section covering East Maui. Appendix B analyzed how the Proposed Action (including the non-petitioned streams) would potentially impact the nearshore environment in East Maui which is summarized within Section 4.2.3. Appendix C analyzed how the Proposed Action (including the non-petitioned streams) would potentially impact the flora and fauna within the License Area on a watershed- by- watershed basis using data produced by the HSHEP model and Hawai'i Gap Analysis Program (HIGAP) data provided by state, along with surveys conducted within the region which is summarized in Section 4.4 of the EIS. Appendix E and F reviewed the history, as well as the cultural and traditional resources and practices of the License Area, including the Huelo License area where the non-petitioned streams are located. Appendix H and I both review the economic impacts of the Proposed Action and associated alternatives which included the

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non-petitioned streams. Hence, these studies were regional studies that were not limited to only the petitioned-streams.

Comment 12: *The DEIS should include the High Definition Stream Survey and the High Definition Fish Surveys referenced in the Appendix A, HSHEP model report for East Maui Streams.*

Response 12: As discussed in Response #9, the appendices for the HSHEP model report included as Appendix A were not included in the Draft EIS. However, the appropriate appendices for the report in Appendix A have been included in the Final EIS.

Comment 13: *To its credit, Appendix A on page 62 mentions that the lease reduces the habitat units on those streams from 588,000 square meters to 88,386 square meters. That is a huge reduction of 85%. It is unfortunate – and misleading – that this fact is not included in the discussion on pages 4-56 and 4-57 of the DEIS.*

Response 13: Note that the portion of the HSHEP report (Appendix A) that your comment refers to is limited in applicability to the non-petitioned streams only; it does not apply to all streams in the License Area. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams. Further, in that the non-petitioned streams currently have a ‘status quo’ IIFS, the Water Lease would not result in a “reduction” of 85% of habitat units for those streams. Rather, the Proposed Action, i.e., proposed Water Lease, represents a continuation of the level of diversion on these streams that historically occurred for many years. Your comment refers specifically to two scenarios -- the Natural Flow scenario and the Full Diversion scenario -- considered under the HSHEP model, but which are scenarios that are not proposed in the EIS as the Proposed Action or alternatives. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams. Therefore, it would have been misleading to, as you suggested, breakout the impacts to the non-petitioned streams in Section 4.2.1 of the EIS, as it applies to the Proposed Action.

Comment 14: *According to CWRM’s Ayron Strauch, “the diversions are generally designed to take up to about the Q40 flow, so they were probably taking, if they needed it, 100% of the Q70 flow . . .” That suggests that the ditch system completely dewateres the thirteen streams 60% of the time, leaving no water at all directly below the diversions on these 13 streams. Taking all the water from a stream 60% of the time has profound ecological consequences that the DEIS brushes over.*

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Response 14: Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams and will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The HSHEP model in Appendix A and summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units by 36.1% from the Natural Flow condition (i.e., no diversions). In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Comment 15: *One of those streams, ironically, has seen too much water. For the last few years, A&B has been diverting water from Waipio and Hanehoi streams and dumping that water into Ho'olawa stream. Excessive dumping has caused stream banks to erode and caused a hazardous condition to recreational users of the stream.*

Response 15: Please note that EMI has made adjustments to its individual intakes based on the amount of rainfall (which leads to increased stream flow) to draw only the required amount of stream flow so that there is no excess water that exits the EMI Aqueduct System at Ho'olawa Stream. In addition, in compliance with the CWRM D&O, EMI will no longer be diverting any water from Hanehoi Stream as it was ordered for full restoration.

With regards to negative impacts due to the conveyance of diverted water in the stream channel associated with failure of the streambanks or stream channel, such impacts could be mitigated by standard streambank restoration practices. It should be noted that most of the streambank erosion will be caused by high flow associated with storms and the conveyance flows may not be the cause of the streambank failures.

Comment 16: Water Available west of Honopou

The DEIS performs mathematical hocus pocus. Simple math from page 2-5 shows that historically 11.06 mgd of water was taken from streams west of state land (west of Honopou Stream) (135.58 mgd at Honopou Stream and 146.64 mgd at Maliko Gulch). On page 2-8, however, the DEIS suggests that only 4.37 mgd are available from the streams west of state land. That is simply not true. The figure provided on page 2-8 is premised on not taking more water

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because “when rainfall is high in East Maui, the ditches are fuller and there is little needed to supplement the flow.” Yet, in the same way, if BLNR limits the amount of water taken from east Maui, then A&B/EMI/Mahi Pono have 11.06 mgd of water available from the streams west of state land.

Response 16: We respectfully disagree with your comment. Please note that the 11.06 mgd is the measured difference at median flow. In the past, the ditches at median flow were already full and diversion in this area was not required. The 4.37 mgd (Q₉₅ flow) is based on taking from this area during the drier periods when more water is needed to supplement flows from the License Area. Additionally, some water that was diverted east of Honopou during Q₅₀ and higher flow events was stored in reservoirs before Māliko Gulch. This water was metered at Honopou and during lower flow times when water from those reservoirs would be released would be erroneously counted again at Māliko Gulch as if it was included in the measure difference in the median flows as coming from outside of the License Area. Hence, the 4.37 mgd is more accurate of what is typically available in between Honopou Stream and Māliko Gulch.

Comment 17: Marine Life

Kumupono Assoc. study of East Maui: “Wai o ke Ola – He Wahi Mo‘olelo no Maui Hikina” was prepared for A&B / EMI in 2001. It provides much historic and contemporary discussion of the robust presence of marine life along east Maui coasts and longtime dependence of east Maui communities on the sea for food supplies. The connection between fresh water stream flows and algae that feeds marine life is well established.

In contrast, Appendix B and the DEIS concludes that East Maui streams flows do not affect conditions for marine life in east Maui, and that east Maui has the wrong ocean conditions to have substantial fish populations. Appendix B offers these conclusions although it includes no survey of ocean fish and measures water chemistry at just seven of 36 streams in the lease area. The conclusions of Appendix B are used throughout the DEIS to justify the “lack of impacts” from EMI’s proposed Alternative 1: diverting all the East Maui streams to the extent permitted by the 2018 CWRM D&O. The EIS needs to acknowledge that there are impacts to ocean fisheries and propose mitigation.

Response 17: Regarding your comment about the Kumupono Assoc. study of East Maui, please note that this resource was used in the Archaeological Literature Review and Field Inspection (LRFI) (Appendix E) and the Cultural Impact Assessment (Appendix F), both of which were conducted in support of the EIS.

Your comment about Appendix B stating that the East Maui has the wrong ocean conditions to have substantial fish populations is unclear. Nowhere is this stated in Appendix B or the Draft EIS. Please note that the primary focus of the survey conducted for East Maui Irrigation

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Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, because the nutrient concentrations in the ocean do not change substantially due to stream diversions as proposed under the Water Lease, there is no pathway for fishing to be negatively impacted. This analysis means that impacts to ocean fish from the Proposed Action are negligible.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of

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estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83 of the Final EIS.

Please note that both the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) and the HSHEP model (Appendix A) involved field work in East Maui whereas the Kumupono Assoc. study of East Maui did not. The Kumupono study is more comparable to the CIA (Appendix F), involving interviews of East Maui residents and their recollections and perceptions. The CIA also notes that several commenters to the Draft EIS stated that they have observed an increase in fish returning to the nearshore coastal environments since the cessation of sugarcane operations in 2016. The CIA (CIA Section 7.5.2) has been updated to include information in the analysis of cultural impacts, specifically in the analysis of impacts to freshwater ecosystems, as summarized in Section 4.6 of the EIS, see pages 4-239 to 4-252 of the Final EIS.

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Moreover, as noted within the CIA, the preferred method of fishing was open ocean fishing for the people who lived along the coast of East Maui based on background research conducted by Cultural Surveys Hawai'i (CSH) (*Ka 'Oihana Lawai'a: Hawaiian Fishing Tradition* by Daniel Kahā'ulelio (2006)). Land Commission Awards analyzed by CSH also indicate that claims were made for fresh water and off-shore fisheries. See EIS Appendix F (CIA), Section 4.1.1.

Comment 18: *The EIS does not include recent studies of marine fish populations in east Maui or recent interviews with east Maui residents. Residents inform us that they have observed that the recent increase in East Maui flows has started to stimulate increased fish populations in East Maui. The EIS needs to include studies on current fish populations discuss how this trend of increasing fish populations that support traditional Hawaiian gathering practices can continue, rather than not mention that it is happening.*

Response 18: Regarding your comment that the EIS does not include recent studies on marine fish populations in East Maui, please note that this is not within the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are discussed throughout Chapter 4 of the EIS.

As discussed in Response #17, the analysis presented in Appendix B concluded that impacts from the Proposed Action to ocean fish in nearshore marine or estuarine reach habitats are negligible; therefore there is no scientifically sound reason to undertake a study of ocean fish in East Maui related to impacts from the Proposed Action. Moreover, evaluation of possible impacts on fisheries and nearshore gathering areas would require rigorous "before/after" experiments to determine changes between periods of diversion and non-diversion, with enough time during each phase for ecosystems to come to an equilibrium. As such an experimental set-up is not feasible because conclusions based on existing conditions are the most scientifically reasonable way to evaluate potential changes as presented in the East Maui Irrigation Assessment of Streams and the Ocean report (Appendix B) and summarized in Section 4.2.3 of the EIS. The survey results indicating that nearshore mixing in the study areas was of a magnitude to bring stream-derived nutrients to background marine levels should be adequate to address the concerns brought up in the comments. However, if it was possible to conduct the controlled before/after experiment it would have provided an unequivocal scientifically rigorous set of results to clarify/confirm that this is the case (e.g., changes/no changes to marine nutrient availability). The differentiation between fisheries and gathering areas is that fisheries generally

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occur offshore in open waters, while gathering areas are within the reach of people from the shoreline.

Regarding your comment about recent interviews with East Maui residents, the Social Impact Assessment (SIA), contained in Appendix G of the EIS and summarized in Section 4.7.2 of the EIS, obtained input from several community members, many of whom have direct and long-term experience with the streams in the subject area. As discussed in Section 4, Preliminary Community Issues, in the SIA, seven focus groups were convened in November 2018. Participants in these sessions included residents, farmers and ranchers, and people who are active in environment and sustainability efforts. These participants lived in Ke‘anae, Wailuānui, Huelo, Ha‘ikū, Kula, Makawao and Pukalani. Moreover, the Cultural Impact Assessment (CIA), Appendix F to the EIS, obtained input from three interviewees, as well as numerous declarations made during the CWRM D&O proceedings. Also, CSH, the consultant that prepared the CIA, conducted follow-up interviews with several commenters who provided specific comments on the CIA portion of the Draft EIS to obtain more cultural information from those who have a connection with East Maui which have been included in the Final EIS. Regarding your comment that the EIS should discuss this trend as it relates to cultural practices, please note that Section 4.6 of the Final EIS has been updated to include the comments received during the Draft EIS phase, which discusses an observed increase in fish populations, as shown on page 4-168 of the Final EIS and as it relates to freshwater ecosystems as shown on pages 4-245 to 4-247.

Regarding your comment that residents have informed Sierra Club of an observed increase in fish populations, please note that several commenters of the EIS and CIA participants have noted “positive changes” that they have observed since the cessation of sugarcane operations such as an increase in fish populations returning to the nearshore coastal environments, as shown on page 4-168.

Comment 19: *In addition, the EIS should specifically identify the all the projects for which Steve Dollar, Marine Research Consultants, Inc. and Sea Engineering have predicted that a project would have an adverse environmental impact. It should also list all the projects that they predicted would not have an adverse environmental impact.*

Response 19: The information you requested is not within the scope of the EIS nor is it relevant. Please refer to Response #18 above regarding the scope of the EIS.

Comment 20: *Native and Invasive Flora and Fauna (Appendix C)*

Appendix C and the DEIS assume that 140 years of EMI use and management has had no impact on the substantial loss of native flora and fauna on public lands in the Lease Area. This is offensive, and also simply not true.

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Response 20: We respectfully disagree with your comment that the Draft EIS and Appendix C assume that there have been no impacts to native flora and fauna in the License Area. We acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui. Section 4.4 of the EIS specifically addresses the impacts of the Proposed Action to flora and fauna resources within the License Area, including a discussion of the cumulative impacts, which is also discussed in Section 4.16 of the EIS. Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS that was prepared by SWCA included a survey of approximately 33,000 acres of land in East Maui referred to in the SWCA report as the "License Area" and approximately 30,000 acres of agricultural land in Central Maui that it referred to as the "Service Area." These areas were collectively referred to as the "Study Area" throughout the SWCA report. This report is summarized in Section 4.4 of the EIS, which has been supplemented in the Final EIS. Appendix C has been updated based on comments received on the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. See page 3-32 of the Final EIS.

Appendix C concluded that the flora and faunal resources in the License Area would remain substantially the same under the Proposed Action as compared to current conditions as there will only be routine maintenance and repair activities that occur in the License Area under the Proposed Action. Hence, there is not anticipated to be any significant or adverse impacts to flora or fauna due to the Proposed Action.

Comment 21: *This brief survey (4 days covering 33,000 acres on the ground and 1 day in the air) drive-by review of flora and fauna is entirely inadequate to inform decision makers of the impacts of the proposed action. None of the Endangered damselfly populations seen by DAR surveys in 2005-06 were seen. No plant list was included in the survey report. The survey does not refer to baseline data available from the extensive 1985 mapping of the E & W Wailuaiki stream basin area that was done as part of a Proposed Hydroelectric plant EIS (Kepler, 1985.)*

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The Flora and Fauna survey also included the 30,000 acres of potential farm lands (referred to as the “use area”) in the 5 day visit and did a poor job of describing impacts there. It was not clear if the gulches in the “use area” were surveyed; they often serve as habitat areas. No acoustical survey for native bats was done at either survey location.

Response 21: Regarding your comment about the length of time to conduct physical surveys related to the flora and fauna resources, ground and aerial surveys were conducted in 2017 and 2018 by SWCA to field-verify vegetation types and species found during previous surveying and mapping efforts. It was determined that the HIGAP vegetation data layer produced by Gon et al. (2006) was highly representative of the vegetation found in the Study Area. Thus, HIGAP mapping data was used to estimate species distributions and potential impacts for the entire 33,000-acre License Area. Threatened and endangered species were categorized by each species' potential to occur in each vegetation type based on habitat needs. Methods have been further clarified in Appendix C, as summarized in Section 4.4 of the Final EIS as shown on page 4-113.

Regarding your comment that none of the endangered damselfly populations seen by DAR surveys, please note as discussed in Section 4.4.2 of the Draft EIS:

*Twelve invertebrates were observed during the surveys, consisting of the Blackburn’s damselfly (*Megalagrion blackburni*), Hawaiian upland damselfly (*Megalagrion hawaiiense*), citrus swallowtail butterfly (*Papilio xuthus*), Monarch butterfly (*Danaus plexippus*), housefly (*Musca domestica*), smaller lantana butterfly (*Strymon bazochii*), mud dauber (*Sceliphron caementarium*), wandering glider (*Pantala flavescens*), green darner (*Anax junius*), Aedes mosquito (*Aedes* sp.), walking stick (*Sipyloidea sipyilus*), and witch moth (*Ascalapha odorata*). All these invertebrates are common in East Maui.*

While the endangered damselfly species were not observed, damselfly species were observed during the survey conducted by SWCA. Moreover, it is acknowledged that other species of damselfly are known to, or may, occur within the License Area as indicated by Table 4-5 of the Draft EIS. However, please note that Table 4-5 of the Draft EIS (Table 4-10 in the Final EIS) has been revised to include the Blackburn’s sphinx moth, which the United States Fish and Wildlife Service (USFWS) indicated in its comments on the Draft EIS may occur in the License Area. Moreover, during the field work conducted by Trutta, pictures of damselfly were captured and are included in Appendix A.

Regarding your comment about the 1985 EIS regarding East and West Wailuāiki streams, please note that this was reviewed by SWCA in response to this comment and no changes were required to the report included in Appendix C to the EIS or to the EIS text.

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Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS that was prepared by SWCA also included a survey of the approximately 30,000 acres of agricultural land in Central Maui that SWCA referred to as the "Service Area" (not the "use area" as you stated in your comment). Please note that SWCA updated the description of the Service Area, which includes gulches, in Section 5.1.3.3 of Appendix C as follows: "*The gulches in the Service Area are composed of mostly non-native and/or invasive species. Along with the surrounding area, the gulches have been heavily impacted by prior and current land uses, such as residential and agricultural developments.*"

Regarding your comment that no acoustic survey was done to detect native bats, it was not within the scope of the EIS to conduct an acoustical study in Central Maui. It is known that the Hawaiian hoary bat occurs within this region. As noted in Section 4.4.2 of the EIS and in Appendix C, mitigation to address the potential of impacts to Hawaiian hoary bat include:

If felling of standing trees occurs during the bat breeding season, direct impacts could occur to juvenile bats that are too small to fly but too large to be carried by a parent. To minimize this impact, no trees taller than 15 feet (4.6 m) should be trimmed or removed between June 1 and September 15.

and

The use of barbless top-strand wire is recommended for all fence construction to avoid entanglement of Hawaiian hoary bat.

Moreover, please note that the above mitigation measures are also consistent to what the USFWS provided in their Draft EIS comment letter regarding the Hawaiian hoary bat.

Comment 22: *We think it is fair to say that Sierra Club hike leaders probably know more about the specific flora and fauna conditions of the Lease Area than is found in the Appendix C survey. Section 5.2.3 of the survey reported that no reptiles or amphibians were detected, but hikers regularly encounter a very small frog at Hanawi stream near the Wailoa ditch.*

Response 22: You are correct that the Terrestrial Flora and Fauna Technical Report provided as Appendix C noted that no reptiles or amphibians were detected during the ground surveys conducted. Moreover, it is noted that there are not any amphibians or terrestrial reptiles that are native to Hawai'i. Hence, any amphibians or terrestrial reptiles within the License Area are considered invasive species. However, please note that Trutta Environmental Solutions did observe amphibians during their stream surveys which is noted and discussed in Appendix A of the EIS. Specifically, the amphibian species observed as described in Appendix A were all

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introduced species. Wrinkled frogs were observed on Hanawā Stream as stated in the “Biotic Surveys” section of Appendix A.

Comment 23: *In section 6.1.1 of Appendix C, the consultants conclude that under the proposed action (30 year lease) "Vegetation would remain substantially the same" in the state Lease Area. Sierra Club leaders have watched invasive species such as melastomes, job's tears, gingers, African Tulip and other pests spread substantially through the Lease Area over the past 30 years of access hikes, while the density and variety of native species diminish. The EIS does not address what mitigations would be needed to make sure that a 30 year lease would not result in the disappearance of most native species in the 1,000 to 2,000 ft elevations in the Lease Area.*

Response 23: Please note that under the Proposed Action, no vegetation removal in the License Area is anticipated except occasionally during routine maintenance and repair activities of the EMI Aqueduct System. Moreover, instream flow throughout the License Area is expected to increase and diverted water will be significantly less than what was historically diverted from the License Area during sugarcane operations. Hence, vegetation is expected to remain substantially the same and no direct impacts to flora or fauna are expected as discussed in Section 4.4.1 and Section 4.4.2 of the Draft EIS.

We respectfully disagree with your comment that the EIS does not address mitigation measures to prevent the disappearance of native species in the 1,000 to 2,000 foot elevations. Note that the elevation of the highest ditch that is part of the EMI Aqueduct System, the Ko‘olau Ditch, is approximately 1,400 feet, not 2,000 feet and the EIS addresses mitigation measures that are applicable to the License Area. Appendix C and in Section 4.4.1 of the Draft EIS provide that endangered or threatened species and critical habitats exist in higher elevations of the License Area. As a mitigation measure, Section 4.4.1 of the Draft EIS states:

To avoid the introduction or transport of new invasive plant species into more pristine portions of the License Area during EMI Aqueduct System maintenance activities, all equipment and vehicles arriving from outside the License Area should be washed and inspected prior to any maintenance activities on cliff sides, near waterfalls, and in other native species-dominated areas in the License Area. Such washing and inspecting should be done at a designated location.

However, please note that the Section 4.4.1 of the Final EIS has been updated to include additional mitigation measures based on comments received on the Draft EIS, as shown on pages 4-121 to 4-124.

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Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable Watershed Management Plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Comment 24: *The DEIS fails to acknowledge that without active management, invasive species will take over native forests. Active management is critical. Page A-2 of Appendix C documents how much invasive species are crowding out native forests in the area that Mahi Pono/EMI wants to lease. One of the primary justifications that the Land Division offers to leasing out its land is that it does not have the resources to manage public land. If someone is going to lease public land, it should only do so if it prepares and implements a management plan that reduces the threat posed by invasive species.*

Response 24: As discussed in Response #23 above, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans as discussed in Section 2.1 of the Draft EIS. However, please note that Section 2.1 of the Final EIS has been updated to include the East Maui Watershed Partnership Management Plan and the BLNR approved minimum content requirements regarding watershed management plans which includes invasive species management as shown pages 2-2 to 2-4 of the Final EIS.

Moreover, EMI has worked closely with the Maui Invasive Species Committee (MISC) to assist in mitigating non-native weeds along the EMI Aqueduct System and access roads. Typical procedures involve EMI staff notifying MISC or other agencies of sightings and locations of non-native weeds, and then facilitating access to these identified areas to conduct appropriate treatment methods. EMI has committed to continuing to work with MISC in order to institute more stringent protocols for equipment sanitization and protection of the License Area.

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The above discussion has been added to Section 4.4.1 of the Final EIS as shown on pages 4-121 to 4-124.

Comment 25: *The EIS should have far more detailed information before declaring that a 30 year extension of the current management style will result in “no impacts.”*

Response 25: As discussed in Response #23 above, no vegetation removal is anticipated except occasionally during routine maintenance and repair activities of the EMI Aqueduct System. Moreover, stream flow throughout the License Area is expected to increase and will be significantly less than what was historically diverted from the License Area during sugarcane operations. Hence, vegetation is expected to remain substantially the same and no direct impacts to flora or fauna are expected as discussed in Section 4.4.1 and Section 4.4.2 of the Draft EIS.

Comment 26: *Sierra Club leaders remove and report invasive plant introductions in the Lease Area to EMI and the state and have offered to participate in hunting for and eradicating various invasive aliens before they can get established. No one has followed up with our requests recently. In the 1980’s, Sierra Club and EMI teams worked together to remove invasive Banyan trees from the stream beds of the Lease Area. Current EMI leadership has not shown any interest in the public watersheds below 3000 elevation where most of their diverted streams are located in the Lease Area. The East Maui Watershed Partnership includes the Lease area lands on their maps, but only has active management of East Maui lands above 3000 elevation, which is above the Lease Area. The EIS needs to make this fact clear.*

Response 26: We acknowledge your comment that Sierra Club leaders actively remove and report invasive plant introduction in the License Area to EMI and the State, and that the Sierra Club and EMI have worked cooperatively together in the past to remove invasive plants from the License Area. As discussed in Response #24 above, EMI has continually worked closely with MISC to assist in mitigating non-native weeds along the EMI Aqueduct System and access roads. Typical procedures involve EMI staff notifying MISC of sightings and locations of non-native weeds, and then facilitate access to these identified areas so MISC may conduct appropriate treatment.

Regarding your comment that EMI leadership has not shown any interest in the public watersheds below 3,000 feet, this is not true. EMI continues to work with MISC by reporting sighting of invasive weeds and coordinating access in these areas, which are well below the 3,000’ level. EMI personnel also monitor the License Area for signs of feral ungulates.

Regarding the East Maui Watershed Partnership, the lands under the jurisdiction of the East Maui Watershed Partnership span over 100,000 acres which includes the entire License Area.

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The License Area is actively managed by the multiple agencies and organizations, including EMWP, MISC, DLNR, etc., in partnership with EMI. EMI does not recall the Sierra Club reaching out to do any invasive species removal.

Comment 27: *The public waters diverted by the EMI systems are the product of two factors: natural rainfall and the watershed lands that receive the rainfall and discharge it into springs and streams. The quantity and quality of future stream flows will depend upon the health of the surrounding watershed lands.*

In section 6 of Appendix C, the consultants conclude that the proposed action will have no impacts because “no habitat removal or loss is proposed...” The EIS ignores the well-documented fact that dewatered streams over time lead to the decimation of native ecosystems and flora and fauna. The EIS proposes no mitigations to improve watershed health other than some mechanisms to prevent introduction of more invasive species on equipment or supplies.

Response 27: We acknowledge your comments regarding the source of the public waters. Please note that the HSHEP model in Appendix A estimates streamflow at all diversion locations based on watershed and rainfall characteristics. Regarding your comment that the quantity and quality of future stream flows depend upon the health of the surrounding watershed lands, please note as discussed in Response #23 above, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans.

The applicable language from Section 6 of the Terrestrial Flora and Fauna Technical Report (Appendix C) states, "*Since there is no habitat removal or loss proposed, impacts are not quantified but are described in qualitative terms.*" Regarding your comment that dewatered streams over time lead to the decimation of native ecosystems, please see Response #20 above regarding cumulative impacts.

Appendix C of the Draft EIS specifically addresses the flora and fauna considerations of the Proposed Action and alternatives. To minimize the impacts to flora and fauna in the License Area, Section 7 of Appendix C identifies several avoidance and minimization measures, including measures to avoid the introduction of additional invasive species to the License Area, which is harmful to the watershed and to native flora which are also reflected in Section 4.4 of the EIS. Moreover, regarding your comment that the EIS does not propose any mitigation measures for watershed health, Section 2.1 of the Draft EIS acknowledges the requirement for watershed management under HRS § 171-58(e).

It is recognized that Hawai‘i’s fresh water originates from the forest, which capture and absorb hundreds of inches of rain each year, allowing for slow infiltration and replenishment of our

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aquifers and streams. Based upon this understanding, the legislature added sub-section (e) to HRS § 171-58, requiring the incorporation of a watershed management plan into all water lease agreements to help protect freshwater resources (surface and groundwater). In addition to sustaining ground and surface water supplies, healthy forests reduce erosion by holding soil in place, improve water quality, and provide habitat for unique and endangered plants and animals. Focusing on watershed management plans that target mauka protection actions (fencing, removal of hooved animals from important watershed forests, invasive weed control, etc.) that benefit native forests is essential if water lessees are going to have a reliable long-term supply of fresh water.

Comment 28: *The Appendix C survey provides no guidance for any restoration activities in the Lease Area, which is widely done in EIS documents that are involved with projects, like this one, that will, by law, trigger future management plans.*

Response 28: As discussed in Response #18 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by DLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B’s former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS. The impacts of the alternatives to the Proposed Action are discussed in Chapter 3 of the EIS.

Moreover, regarding your comment about restoration activities, as discussed in Response #23 above, the lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans and will be required to jointly develop a watershed management plan with the DLNR. One of the goals of a watershed management plan is to identify priority outcomes essential to maintain and *restore* biological integrity to the maximum extent practicable which include but is not limited to:

1. Removal and control of non-native hooved animals (pigs, goats, deer, sheep, cattle) from important watershed forests.
2. Removal or containment of damaging invasive plants and animals that threaten important watershed forests.
3. Monitoring and controlling other forest threats including fires, predators, and plant diseases.
4. Restoring and out-planting native species in important watershed areas and buffer zones.

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5. Communication, outreach and community education to build capacity for citizen-based watershed protection.

However, Appendix C does provide detailed avoidance and mitigation measures to minimize impacts of the Proposed Action to flora and fauna which are summarized in Sections 4.4.1 and 4.4.2 of the Draft EIS. Moreover, the discussion of these avoidance and mitigation measures has been expanded on as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Comment 29: *Section 6.2 of Appendix C concludes that the No Action alternative (no lease awarded) would mean that it would likely not be viable for EMI to maintain the ditch system. The EIS offers no substantial discussion or analyses of others such as County or State maintaining portions of the ditch system for much reduced level of diversion. The idea is simply dismissed as “too speculative” at this time, although the Maui Board of Water Supply has issued a report after investigating the topic.*

Response 29: Regarding your comment that the EIS offers no substantial discussion or analysis of others maintaining or operating the EMI Aqueduct System, this is discussed in Section 3.1.2 of the Draft EIS, as follows:

During public scoping for the DEIS in 2016 and 2017, it was suggested that the EMI Aqueduct System should be brought under new ownership, without the further involvement of A&B and EMI, and potentially under public ownership. Ownership of the EMI Aqueduct System changed in January 2019 to include Mahi Pono, which intends to pursue diversified agriculture in Central Maui. Consideration of another change in ownership is too speculative at this point to warrant analysis. A change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action. As discussed elsewhere in this DEIS, EMI has been operating the EMI Aqueduct System since the start of construction in the 1870s. Few have the knowledge to operate and maintain this unique and complex system, consisting of approximately 388 separate intakes, 24 miles of ditches, and 50 miles of tunnels, as well as numerous small dams, intakes, pipes, 13 inverted siphons and flumes. Furthermore, the EMI Aqueduct System is not for sale, and forced acquisition of the system is projected to be prohibitively expensive, resulting in substantial costs to the public. For these reasons, this alternative is viewed as a highly speculative and unreasonable alternative, and one that would not meet the objectives of the Proposed Action. Therefore, it was dismissed from further review.

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Hence, it was deemed to be speculative as the EMI Aqueduct System is not for sale, there had not been a cost appraisal of the system, and few have the skills or knowledge to operate the extensive and complex EMI Aqueduct System.

We are aware of the Board of Water Supply's (BWS) Temporary Investigative Group (TIG) Report, which was published after the Draft EIS, on the potential acquisition of the EMI Aqueduct System by the County, speaks directly to the "ownership change" alternative referenced in your comment. To provide further context, on July 19, 2019, the Maui County BWS formed the subject TIG to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System.

Based upon information available in relation to findings and conclusions of the TIG report, it is our assessment that the County's potential acquisition of the EMI Aqueduct System remains speculative. Furthermore, much of the institutional knowledge needed to properly operate the EMI Aqueduct System would be lost under any change in ownership scenario. This could reduce the efficacy of the system, the new owner may not have the expertise needed to properly maintain it, and possibly lead to additional and unforeseen environmental impacts. Moreover, a change in ownership would presumably directly contradict the objectives of the Proposed Action as outlined within the EIS. It is noted that the TIG report's proposal for water rates for the Central Maui agricultural fields is nearly ten times that of what is being charged to the Agricultural Park and Upcountry agricultural users, thus rendering the economic viability of agriculture on the Central Maui fields unfeasible.

For purposes of assessment in this EIS, it is assumed that an alternative owner of the EMI Aqueduct System would be required to meet goals of the Proposed Action as described in this EIS, including meeting the Proposed Action's stated objective to support an economically feasible, sustainable diversified agricultural operation across the Central Maui agricultural fields.

For the reasons discussed above, the County's acquisition of the EMI Aqueduct System, and the County's pursuit of a water lease from the BLNR are viewed as speculative and an unreasonable alternative. However, the existence of the TIG Report and its findings have been acknowledged in Section 3.1.2 of the Final EIS, as shown on pages 3-19 to 3-20. A copy of the TIG Report has been included in the Final EIS as Appendix Q.

Comment 30: *Section 6.3 concludes that the Reduced Water alternative (alternative 2) would result in more ditch maintenance required and "more human activity in area and greater chance of potential for negative impacts." This section also concludes (with no proof offered) that increased water flows in the stream would likely have very little impact on native land based flora and fauna and that impacts on aquatic fauna (damselflies, etc) would vary by stream. The*

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EIS offers no evidence that either of these conclusions is true, yet they are offered as a rationale to decision makers to support the Alternative 1 lease.

Response 30: To clarify, Section 6.3 of Appendix C states that, “*The increased water flows in the streams would likely have very little impact on terrestrial flora and fauna.*” Hence, this statement refers to all existing flora and fauna within the License Area and is not limited to native species. As discussed in Section 5.1.2.1 of Appendix C in the Draft EIS, the majority (60%) of the License Area is already composed of “Open / Closed ‘Ōhi‘a Forest,” which mainly constitutes the higher elevation areas where water is not diverted as shown by Figure A-2. Moreover, the areas surrounding the EMI Aqueduct System tend to be composed of “alien forest” which consist of non-native species. Hence, due to this it is anticipated under the “Reduced Water Volume” alternative, which would involve more human activity due to increased ditch maintenance needs, an increase in water flow in the streams would likely have little impact on native land based flora and fauna in the areas where more stream flow would be restored, as compared to the No Action alternative (i.e., no Water Lease). However, as noted in Section 6.3 of Appendix C the impacts would vary on a stream-by-stream basis. Please note that Appendix C and Section 4.4 of the Final EIS has been updated as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131 to discuss how the Proposed Action would potentially impact the flora and fauna within the License Area on a watershed by watershed basis, using data produced by the HSHEP model and HIGAP data provided by state, along with surveys conducted within the region.

Regarding aquatic fauna, and specifically damselflies as raised in your comment, under the Reduced Water Volume alternative, the HSHEP model (Appendix A) conducted an analysis of impacts to damselflies, which concluded that return to natural flow conditions should improve damselfly habitat. However, the restoration of baseflow will likely also improve habitat conditions for a number of introduced predator and competitor species of the native damselflies and thus may not in itself increase damselfly populations. Hence, under the Reduced Water Volume alternative, the more water is returned to natural flow conditions, the more of an increase in damselfly habitat there will be. This has been added to Section 3.4.3 of the Final EIS as shown on page 3-27.

Comment 31: *Appendix C refers to a future Management Plan for the Lease area that will be done by the State of Hawai‘i for the lease lands as part of any future lease agreement. The lease requirements found in HRS 171-58(e) specify that A&B/Mahi Pono need to jointly prepare a management plan with the State:*

(e) Any new lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed

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management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan.

The Appendix C - "Assessment of Terrestrial Flora and Fauna" made absolutely no reference to any need for restoration or management of the public lands in its analyses or recommendations. It seems unlikely that any DEIS considering the impacts of a longterm action can effectively evaluate and mitigate those impacts if the impacts are not clearly quantified in EIS.

Response 31: As discussed in Response #18, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B’s former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS.

Moreover, as discussed in Response #23 above, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans.

However, Appendix C does provide detailed avoidance and mitigation measures for actions within the East Maui License Area, which are summarized in Sections 4.4.1 and 4.4.2 of the Draft EIS. However, please note that these avoidance and mitigation measures have been expanded on as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131.

Comment 32: *Section 6.5 discusses alternative ownership/management of the ditch system and lease area- and concludes that such management "would have effects identical to those described in "proposed Action." on Terrestrial Flora-Fauna. The DEIS offers no analyses of increased investment in watershed management that could come with a new "ownership" model.*

Response 32: It is unknown whether any increase in investment in watershed management would come as the result of new ownership of the EMI Aqueduct System (which is not for sale in any event). However, as discussed in Response #29 above, alternative ownership of the EMI Aqueduct System is purely speculative and furthermore, would not achieve the objectives of the Proposed Action.

Comment 33: *Section 6.6 dismisses the greater public access alternative (smaller lease area) and concludes that greater access would impact flora and introduce more alien species and impact habitat of native birds. The DEIS offers no analyses of increased access permitting*

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greater restoration / management activities in the watershed lands as has been the case in various areas on Maui that manage public access.

Response 33: Any alternative or variation of an alternative that would increase public access to the License Area would have the potential to increase impacts to flora and fauna species that are present in the License Area. Increased access into the License Area would presumably allow for hiking, hunting, gathering, and other recreational and/or cultural activities to take place. An increase in these activities would result in increased vegetation trampling, which, depending on degree of access and use of the area, may have a significant impact on existing flora. In addition, the potential for weed, rapid ‘ōhi‘a death, and little fire ant introduction and invasion would increase. Weeds, by definition, can outcompete most flora for space and nutrient resources. Weed invasions, if they were to occur, would decrease the quality and quantity of habitat available for native plant species, which in turn may decrease the quality of critical habitat for the Maui parrotbill and crested honeycreeper. The presence of vehicles and humans for various activities in the License Area could disrupt the normal behavior of wildlife and temporarily displace individuals from roadside habitat. Human noise and activity would increase due to an increase in access, which would have a negative impact on wildlife.

Increasing the area open to public use would increase the potential for these impacts to flora and fauna to take place and potentially increase the intensity of the impacts throughout the License Area. Should the License Area be modified for greater public access, the intensity of these impacts would be greater if the public is allowed in the eastern portion of the License Area, as the analysis in Appendix C demonstrates that native and unique flora and fauna species are more likely to occur in the eastern portion of the License Area. Allowing public access to the western portion of the License Area may have a lesser negative impact on biological resources. Hence, under this alternative, it is recommended that the Water Lease lessee work with the respective State agency to design an appropriate boundary that protects the integrity and safety the EMI Aqueduct System and staff, as well as minimize public access to the eastern portions of the License Area.

Please note that the above discussion has been added to Section 6.6 of Appendix C and Section 3.2.2.2 of the Final EIS as shown on pages 3-21 to 3-24.

Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion

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of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place.

Comment 34: *Section 7 offers Avoidance & Minimization measures such as:*

- *Biological monitor during maintenance in waterfall /cliffside areas*
- *Wash and inspect equipment before maintenance*
- *inspect any materials used for maintenance*
- *monitor ESA damselflies- work with USFWS*
- *training for onsite staff to recognize endangered species*
- *sensitivity to i'iwi nests during tree trimming*
- *use of barbless strand for top wire of fences to avoid bat injuries*

While these would be a step forward from current conditions, there is no accountability for these practices actually being employed. Take the example of fencing mentioned. Thousands of acres of Mahi Pono land have recently been fenced, some of which has stands of trees that could serve as potential endangered bat habitat. All of the fencing observed has barbed wire on its top strand. Will all this be changed only if the lease is granted?

Response 34: You are correct that Section 7 of Appendix C (Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease) provides the above avoidance and minimization measures. As discussed in Response #23 above, these avoidance and minimization measures have been expanded on as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

In response to your concern about accountability, it is anticipated that any Water Lease issued by BLNR will include conditions imposed upon the lessee. In this case, it is anticipated that mitigation measures presented in the EIS will inform the BLNR as to what conditions it may wish to impose upon the Water Lease lessee. Should the Water Lease be awarded such that Mahi Pono can proceed with its desired farm plan, Mahi Pono would comply with any applicable Water Lease terms, including removal of barbed wire, if required. Mahi Pono installed the barbed wire strand as a deterrent to deer, which, if unchecked, could destroy crops. Even if no Water Lease is granted, Mahi Pono has indicated that it will work with the State Division of Fish and Wildlife (DOFAW) and the Department of Agriculture to determine whether the existing fences are a danger to the Hawaiian hoary bats and if so, whether an effective alternative can be implemented to deter deer from entering on to the farm land.

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Comment 35: Hiking

Why does the DEIS assume that the leaseholder should retain the right to determine who is allowed to hike on public land? It is unfortunate that the comments from the Maui Island Advisory Council to Na Ala Hele were essentially disregarded.

Response 35: We respectfully disagree with your comment that the Draft EIS assumes that the Water Lease lessee should retain the right to determine who is allowed on public land. Conversely, Section 4.8 of the Draft EIS states:

The Ko‘olau Forest Reserve Hunting Unit encompasses portions of Huelo, Honomanū and Ke‘anae Nāhiku within the License Area (See Figure 4-38). The Hunting Unit is administered the DLNR, Division of Forestry and Wildlife. To hunt within the License Area, hunters must obtain a license from the DLNR and an EMI Permit / Waiver. Hunting grounds are limited to one hunting party per hunting area, as regulated by the DLNR. Hunters enter the hunting unit every Saturday and Sunday, as well as holidays observed by EMI. Prior to entering, hunting parties must sign in with the license number obtained from the DLNR, and upon exiting must log in any game that are taken. Access to the hunting grounds is managed by EMI through eight existing EMI access roads. Hunting is permitted year round. Hunting parties may enter the License Area by vehicular access, however, must traverse by foot in most areas.

Hiking is also a permitted recreational use within the License Area, and is limited to hiking clubs. Access to the License Area for hiking is acquired through a Hiking Waiver from EMI.

Hence, access into the License Area is managed in partnership by the DLNR and EMI. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

We acknowledge that the Maui Island Advisory Council sent a letter to the Nā Ala Hele, Trails & Access Program on December 21, 2016 during the early consultation phase of the EIS process. We respectfully disagree with your comment that the Draft EIS completely disregards the comments in the Maui Island Advisory Council letter to the Nā Ala Hele, Trails & Access Program. Those comments were addressed and responded to as shown in Appendix J of the Draft EIS. As noted in the response to that comment letter, the Maui Island Advisory Council's comments and concerns were considered in the preparation of the Draft EIS with regard to

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meeting all relevant requirements, including the content requirements prescribed in HAR § 11-200-17.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access to areas that are not within the License Area. Please also see Response #33 regarding the revised License Area under the most recent revocable permits and projections related to the geographical extent of the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to a more robust discussion regarding the impacts from experiencing an increase in public access in the License Area

Comment 36: *The EIS should include an inventory of roads and trails in the Ko‘olau Forest Reserve. The Highways Act protects public right-of-way on roads and trails owned by the state. When the Ko‘olau forest reserve was created, all roads and trails in the forest reserve became protected rights-of-way. The EIS needs to show the protected roads and trails in the Ko‘olau Forest Reserve. HRS §171-35 requires leases to protect rights-of-way and access to other public lands. See also Robello v. Cnty. of Maui, 19 Haw. 168 (1908)*

Response 36: Section 4.5 of the Final EIS, as well as Appendix E (Archaeological Literature Review and Field Inspection) have been revised to include the current inventory of roads and trails in the License Area. CSH completed a geographic analysis of trails and roads that appear

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on maps of the License Area. This analysis is limited to trails and roads that were depicted on maps between 1869 and 1992 and available to the public domain. This analysis is also limited to only the roads or trails that extend within the License Area. Section 4.5 of the Final EIS has been updated to include a further discussion regarding these maintenance and access roads, and access points. See pages 4-147 to 4-149 of the Final EIS, together with Figure 48 in Appendix D, which has been added to the Final EIS to correspond with the above text (Figure 4-39 in the Final EIS).

HRS § 171-35 does not require a lessee to protect rights of way and access to other public lands. To the extent that HRS § 171-35 (Lease provisions; generally) applies to a water lease, it gives the BLNR discretion on whether and how to address reservations of rights of way and access to other public lands. The section of the law you cited provides as follows:

Every lease issued by the board of land and natural resources shall contain:

1. The specific use or uses to which the land is to be employed;
2. The improvements required; provided that a minimum reasonable time be allowed for the completion of the improvements;
3. Restrictions against alienation as set forth in § 171-36;
4. The rent, as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;
5. Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and
6. Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the state constitution and of this chapter.

The issue in the case you cited from the Supreme Court of the Territory of Hawai‘i, Robello v. Maui Cnty., 19 Haw. 168 (1908) was whether the easement of the public in an existing highway was extinguished by a lease to a private party when a new road was planned at some time in the future. The Court held that the lessee took his lease with full knowledge of the existing highway due to the reference on the map and actual knowledge of the existence of the road and was therefore not allowed to erect fences blocking the old road. The Court further held that no injunction should have been granted restraining the County from removing lessees fences to keep the public road open. This case is not applicable to the proposed Water Lease.

Comment 37: *In its December 19, 2016 letter, the Division of Forestry and Wildlife states: “Thus the Division recommends that the areas to be conveyed for a water license be done so*

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through a land agreement that is limited to the infrastructure required for maintenance and conveyance of water, and that any terms of any agreement established for the delivery of water ensure unrestricted public access to the reserves and any state owned roads and trails.” This means that public access to the trails is not at the whim of the leaseholder. The DEIS must reflect this fact.

Response 37: As mentioned in Response #35 above, Section 3.2.2.2 of the Draft EIS analyzes the Modified Lease Area alternative. Under the “Modified Lease Area” alternative assessed in Section 3.2.2.2 the Draft EIS, it is assumed that access to and uses within the State-owned land that is outside of a smaller License Area would be managed by the State (presumably, DOFAW). DOFAW has not indicated how it intends to regulate those lands. Should there be greater public access to the License Area than currently exists, pursuant to the analysis in Section 3.2.2.2 of the EIS and Appendix C, it is anticipated that there may be an increased introduction or spreading of invasive species within these areas.

Comment 38: Easement

On page 3-6 of the DEIS, there is an acknowledgement of the 1938 agreement – a copy of which should be reproduced in an appendix. That 1938 agreement allows DLNR to deliver water to the county without having to purchase the ditch system from anyone – and regardless of whether a lease is granted or not.

The EIS has no discussion of the fact that EMI controls the 4 levels of ditch system west of lease area, which are connected to the East Maui ditch system, but not affected by the lease decision.

Response 38: We disagree with the statement that the “1938 agreement allows DLNR to deliver water to the county without having to purchase the ditch system from anyone – and regardless of whether a lease is granted or not.” A copy of the 1938 Agreement has been appended to the EIS as Appendix R. The EMI Aqueduct System is a fully integrated system that is wholly owned and operated as such by EMI, both at the time that the 1938 Agreement was entered into and presently.

First, if a lease (or license) is granted, the 1938 Agreement contemplates that the licensee will control the delivery of the water arising on the State land. There is nothing in the 1938 Agreement that provides for a portion of the water arising on the State lands to be withheld from auction and thereby carved out of the lease or license and reserved for delivery to the County.

Second, for the sake of argument, in the event that a carve-out from auction *were* to be permitted, or a lease *were not* to be granted, the State’s easement across the private land would only allow for conveyance of water by the State to the western boundary of the License Area, which

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boundary is at Honopou Stream. The 1938 Agreement does not grant the State any right to use those portions of the EMI Aqueduct System that are located *west* of Honopou Stream. For the State to be able to deliver water collected in the License Area to the County of Maui Department of Water Supply ("MDWS"), an easement would have to be secured to utilize the Wailoa Ditch from Honopou Stream westward to Kamole Weir -- which is the point where the MDWS is able to receive water.

Regarding your comment about there being four levels of ditch system west of the License Area, it is correct that there are four levels of EMI Aqueduct System located west of the License Area. Figure 2-2 (EMI Aqueduct System) shows the ditches that are located on private lands west of the License Area. It is noted in Section 2.1.2 of the Draft EIS that the EMI Aqueduct System is estimated to divert an additional 4.37 mgd in this area. However, please note that area is situated on privately owned lands and is not subject to the CWRM D&O or the Water Lease. As such, there is indeed acknowledgement of EMI's control of a ditch system west of the License Area in the EIS document.

Comment 39: Cultural Impact Assessment (Appendix F)

The EIS must fully acknowledge the impact that past and proposed reduced stream flows have had on the native stream life and marine life that is so directly connected with the ability of Native Hawaiians to engage in traditional cultural practice of fishing and gathering in East Maui.

Response 39: As discussed in Response #20 above, we acknowledge that an EIS must consider cumulative impacts, which means "the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions." HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision-making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease. Please note that under the Proposed Action, significantly less water will be diverted from the streams in the License Area than occurred over the past century and more. However, because streams in East Maui have been diverted for over a century, it is not scientifically possible to fully document impacts that first took place more than a century ago as pre-diversion data does not exist. Moreover, we acknowledge that cultural practices and subsistence lifestyles that are unique to East Maui communities have a direct relationship with the health and abundance of native stream and estuarine habitats, as well as the region's overall environmental integrity. This is described in the technical studies that were prepared for the EIS including the Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure

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(HSHEP Model) (Appendix A); East Maui Irrigation Assessment of Streams and the Ocean (Appendix B); and Terrestrial Flora and Fauna Technical Report (Appendix C).

Comment 40: *Appendix F, the Cultural Impact Assessment (CIA), concludes that as long as stream flow standards are met in the east Maui streams subject to the 2018 Water Commission decision, all other streams can be diverted with no impacts to traditional Hawaiian cultural practices. It also concludes that the east Maui coasts do not have reefs and therefore do not support related marine species. The conclusion does not reflect marine life and streamlife studies from east Maui, or generational knowledge in the statements of numerous east Maui kama'āina included in Appendix F(i).*

Response 40: Your comment that the CIA "*concludes that as long as stream flow standards are met in the East Maui streams subject to the 2018 Water Commission decision, all other streams can be diverted with no impacts to traditional Hawaiian cultural practices,*" is a misstatement of the CIA's conclusions. Rather, the CIA acknowledges that the Proposed Action may impact Native Hawaiian cultural resources and practices and provides for several recommendations to mitigate those impacts. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject

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to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, pages 4-239 to 4-252. The CIA, and Section 4.6 of the EIS, have been updated to include identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA that was attached to the Draft EIS are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been proposed by CWRM, CSH, and other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and, 3) facilitate access via an appropriate access policy and procedure for

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cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law as discussed in Section 4.6 of the Final EIS.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the Lease Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Your comment that the EIS concludes that there are no reefs and does not support related marine life is an incorrect assumption. There are no statements in the EIS or within the East Maui Irrigation Assessment of Streams and the Ocean report (Appendix B) or the other technical studies alleging this. Rather, this report analyzed the interactions of the streams in the License Area with the related ocean environments and concluded that:

The effects of stream water on marine waters must be considered minor in these habitats. This result is supported by the physical processes associated with relatively small input of stream water to the vastly larger ocean environment. The prevailing conditions of extreme mixing by physical forces is the most important factor in diminishing the zone of influence of stream water in a marine setting. In all cases where it was possible to sample across the boundary where streams flowed into the ocean, there were sharp gradients reflecting the intense mixing of stream water to background ocean levels. Observation of the habitats in these transition zones indicated that they were primarily composed of sand and barren

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rock. Owing to continual, intense wave energy, these nearshore areas do not constitute important habitats for coral reef communities and associated marine species. Beyond the narrow transition zone, the influence of stream water is minimal owing to rapid intense mixing. These processes should not be affected by changes in stream flow related to seasonal variation of diversions.

As for the risks of impacts to fishing, the collected data presented in Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be negatively impacted. Please note that the report acknowledged that different results could occur with respect to linking stream discharge to estuarine function in other areas. But due to the harsh physical conditions of East Maui, stream flow rates do not greatly impact marine ecosystem function.

Moreover, Section 4.2.3 has been updated to discuss that the HSHEP model used by Trutta to conduct an analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals contained herein as Appendix A, also considered estuarine reaches present in the stream segments subject to analysis as shown on pages 4-78 to 4-83. Using the HSHEP model coupled with aerial imagery available, the stream mouth areas of each stream subject to analysis were reviewed for the potential for estuary segments present. The presence of a terminal waterfall, possibility of estuary habitat, and the extent of embayment at the stream mouth were also noted. Table 4-6 of the Final EIS shows the results for all of the East Maui streams within the License Area associated with the EMI Aqueduct System. Furthermore, the subsequent Table 4-7 of the Final EIS, shows the five streams that have any possibility of an estuarine reach. Of these five streams, three streams (Waiahue, Pi'inaau, and Honomanu) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reach, Pa'akea will have connectivity flow restoration, while 'O'opuloa will have no flow restoration and will remain as per the 1988 IIFS. Thus overall, the majority of estuarine habitat that exists in the License Area will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-

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DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83.

Comment 41: *Information in kama'āina interviews mentions the importance of stream flows to the abundance of ocean fisheries and related cultural practices of fishing and gathering.*

Hawaiian cultural users whose interviews are in the CIA agree: increased stream flows are needed to support stream and marine life in enough abundance to allow traditional gathering from both streams and ocean coastlines.

The EIS also needs to evaluate the cultural impacts of increasing the amount of water diverted from many streams compared to the amount diverted the past two years.

Response 41: We acknowledge your comment about kama'āina interviews that mention the importance of stream flows to the abundance of the ocean fisheries. Please note that several commenters of the EIS and CIA participants have noted both positive changes (increase in fish populations returning to the nearshore coastal environments, increase in water flow rate for taro farming) and negative changes (increased erosion causing near-shore brown water and blockages of culverts from uprooted vegetation) to the regional environment since the halting of diversion after the closing of HC&S commercial sugar operations in Central Maui in 2016. However, as noted in Response #40 above, from an ocean chemistry standpoint, the results of the study in Appendix B suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. See Appendix B, Section 5. The CIA recognizes 25 streams that were identified by community participants as having an estuary environment that may be impacted by streamflow as presented in Tables 14 through 16 in the CIA.

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Moreover, as discussed in Response #17 above, Table 4-7 of the Final EIS shows the five streams that have any possibility of an estuarine reach based on HSHEP model as shown on pages 4-78 to 4-83.

The HSHEP model used in Trutta Environmental Solutions' report (Appendix A), it clearly and directly addresses the impacts of streamflow diversion on the native amphidromous stream species (including opae, 'o'opu and hīhīwai). Due to an increase in streamflow under the Proposed Action when compared to historical diversion rates, opae, 'o'opu and hīhīwai are anticipated to have an increase in HU. However, these HU will slightly decrease from current conditions as more water is gradually diverted as the Mahi Pono farm plan develops to full build-out as outlined in Section 4.2.1 of the EIS.

The CIA and EIS identify impacts to the regional environment, taro farming, and freshwater resources within the License Area based public documentation and consultation with the community as presented in Section 4.6 of the Draft EIS. Specifically, Section 4.6 of the Draft EIS states:

4. *Participant Kyle Nakanelua is concerned with the act of diverting water. He explicitly states that “when those places dry up that adversely impacts the way of life, the cultural practice if you will” and it “adversely impacts the people’s way of life that live there.”*
 - a. *To support this claim, Mr. Nakanelua states that ‘ōpae was once prevalent in the streams that flowed through their family property named Lakini. He relates that when he began to regularly clean the property his grandmother would still catch ‘ōpae. He adds that today there is no ‘ōpae but there are prawns. When CSH asked if ‘ōpae was being overpicked, he replied “no” because “we were the only one there.” He also does not think the introduction of prawns is to blame but believes “that the flow of water is impactful” and has seen the water decline since 1989.*
5. *A 2014 declaration provided by Dan Clark from Ke’anae stated he needs cool, fast running water for optimal kalo production. Due to low stream flow results, there has been an increase in disease to his kalo, which decreases production.*
6. *Jonah Jacintho states in his 2014 declaration that due to a lack of stream flow, fish populations have decreased therefore he cannot fish as much. To increase the population of ocean fish, fresh water is integral for spawning and nutrients. He*

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also added that more water in stream beds would also increase 'o'opu, prawn, and hīhīwai populations.

Section 4.6 of the EIS summarizes the findings of the CIA as follows:

Based on information gathered from the cultural and historical background, and the community consultation, significant cultural resources were identified within the License Area, as well as outside of the License Area. It should be acknowledged that although some of the impacted cultural resources exist outside of the License Area, what takes place within the License Area directly affects these cultural practices and resources. At present, there is documentation and testimony indicating traditional and customary Native Hawaiian rights are currently being exercised within the License Area. Cultural resources, practices, and beliefs were identified as currently existing within the License Area. In addition, East Maui, which includes the License Area and beyond the License Area, maintains a rich subsistence and cultural history.

Additionally, the CIA and Section 4.6 of the Final EIS have been updated to more specifically include identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action based on community consultation (see Responses #18 & 40) as shown on pages 4-239 to 4-252 . The revised CIA includes community input regarding recent changes observed as a result of stream flow changes in the recent past.

Comment 42: Hawaiian Home Lands
HAR §11-200-16 provides:

The environmental impact statement shall contain an explanation of the environmental consequences of the proposed action. The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, a statement shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

*The current DEIS contains no specific information regarding the water reservation amounts from the East Maui lease area needed by DHHL. **This information is now available and was publicly offered by DHHL staff at the Oct 9, 2019 BLNR meeting.** These specific legally protected water reservations should be included in the EIS, and Mahi Pono's water use plans*

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must be adjusted accordingly to reflect this amount, in order for the public and agency comment process to be based upon accurate information. The DEIS also assumes in the Executive Summary that Mahi Pono can use the east Maui water until the time that DHHL needs its reservation. A discussion of whether it is legal for A&B /Mahi Pono to assume that the DHHL “water reservation” can be utilized by Mahi Pono until it is “needed by DHHL” should also be included in the EIS. There is no indication in the DEIS how the MP Farm Plan will be adjusted to accommodate for the 11.5 mgd of east Maui Water that DHHL is reserving. The EIS should plainly discuss this.

Response 42: We respectfully disagree with your comment that the Draft EIS does not contain specific information regarding the water reservation amounts from the License Area. Section 2.1.1 of the Draft EIS states:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL’s Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, based on the above, the Draft EIS assumed that DHHL would make a reservation for approximately 11.5 mgd. Section 2.1.1 of the Draft EIS also explains that the DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B / EMI, Mahi Pono, the DLNR’s Land Division, and DHHL staff and consultants.

Section 2.1.1 has been updated in the Final EIS to acknowledge that the results of the Beneficiary Consultation were presented to the Hawaiian Homes Commission (HHC) on May 30, 2019, as agenda item G-2. The HHC passed a motion to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation

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request approved by HHC is for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Kēōkea-Waiohuli + 1,027,510 gpd non-potable water for Pulehunui) of water. This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. Section 2.1.1 of the EIS has also been revised to acknowledge the action of the HHC of May 30, 2019, as shown on pages 2-4 to 2-7 of the Final EIS. As of this time, it is our understanding the water reservation request has not been made to CWRM.

We acknowledge that temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessee and the DHHL would be necessary to allow the Water Lease lessee to make any temporary use of water reserved for DHHL.

Within the Draft EIS, the analysis of this reduction in available water for the Water Lease lessee falls under the analysis of the Reduced Water Volume alternative. Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water). The DHHL reservation was acknowledged in the Draft EIS ("Projections of the amount of government water available from the License Area at Honopou stream after taking into account the CWRM D&O, is approximately 87.95 mgd. This amount would be subject to further reduction in accordance with the DHHL reservation once called upon for use by the DHHL."). As discussed in EIS Section 3.2.1, Mahi Pono intends to farm as much of the Central Maui agricultural lands as it is possible based on how much water is available under the Water Lease.

Comment 43: *If this would be based upon a need for more water over the first few years of planting and less water when crops are established, using regenerative agricultural methods, as was envisioned in the 2018 CWRM D&O:*

115. The estimated water requirements will change not only because some potential partners and lessees are expected to rotate multiple crops that could potentially have different crop coefficients but also because water requirements could change significantly through the use of regenerative agricultural methods.

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If Mahi Pono Water demand is expected to decrease over the years, as suggested by the CWRM 2018 review, a timetable for restoration of non-IIIF streams in the Huelo Lease area should also be discussed in the EIS.

Response 43: Please note that the CWRM D&O was issued prior to the sale of the approximately 30,000 acres of agricultural land in Central Maui to Mahi Pono. The Mahi Pono farm plan is not the agricultural activities contemplated under the CWRM D&O. The CWRM D&O envisioned that there would be multiple farmers involved in the cultivation of the 30,000 acres. However, with the acquisition of the Central Maui agricultural lands by Mahi Pono, there is now a unified Mahi Pono farm plan that is based upon using, at maximum build out, the amount of surface water available for diversion after compliance with the CWRM D&O as discussed in Chapter 2 of the Draft EIS.

Conversely, the Mahi Pono farm plan is expected to need increasing amounts of irrigation water as it progresses toward full build out of the Mahi Pono farm plan as discussed in Section 2.1.5 of the Draft EIS, as follows:

An estimated 10 years will be required for Mahi Pono and lessees to remove volunteer sugarcane and weeds from the approximate 30,000 acres, amend soils, install field improvements, build warehouses and other structures, and plant crops. The predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years (Plasch, 2019).

Hence, contrary to your comment, Mahi Pono's water demands are not expected to decrease over the years but, rather they would increase as the Mahi Pono farm plan is realized. However, the Mahi Pono farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community.

The Mahi Pono farm plan will evolve over time based on a number of factors, including the available supply of surface water, experience which will be gained on crops that can grow well in Central Maui, crops that are profitable, market demand, etc. The Mahi Pono farm plan and its impacts discussed within the EIS are based on full operations by about

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2030, assuming no major setbacks. However, water will be diverted from the License Area to Central Maui only as needed at any given time.

Your comment that a timetable for restoration of non-petitioned streams in the Huelo portion of the License Area should be discussed in the EIS is unclear. There are no pending petitions to establish new IIFS for the 12 non-petitioned streams within the License Area, nor are we aware of any requirement to establish new IIFS for those streams. However, the EIS contemplates a variety of alternatives, including an alternative that includes a Water Lease that authorizes diversions in amounts less than would be allowed under the CWRM D&O. That "Reduced Water Volume" alternative could entail a reduction in diversions from the petitioned streams or the non-petitioned streams, or both. The analysis provided in the HSHEP model presents impacts to habitat units for various species under four different stream flow scenarios, i.e., "natural flow" (no diversions whatsoever), "full diversion" (diverting 100% of available low flows), the "2018 IIFS" diversions (diversions consistent with the IIFS established under the CWRM D&O), and the "no Water Lease" diversion scenario (diversion of 30% of flow after compliance with the CWRM D&O). This information is provided for each stream within the License Area that is or has been diverted. As such, the EIS includes data and analysis regarding related impacts from changes in flows within the non-petitioned streams. However, as noted, and contrary to your comment, the water needs for the Mahi Pono farm plan are expected to increase over time as the amount of cultivated acreage in Central Maui increases.

Comment 44: Agricultural and Related Economic Impacts (Appendix I)

The EIS should acknowledge that Mahi Pono has no track record of successful farming under Maui conditions.

Response 44: The Mahi Pono team has significant experience cultivating diverse crops and managing cattle operations on more than 100,000 acres on the continental U.S. Also, the company has established market channels, and substantial financial resources. In its first 18 months of existence, Mahi Pono has hired over 200 workers from Maui, most of whom have farm experience on the island. It is acknowledged that Mahi Pono is new to farming in Hawai'i. However, they come with significant farming credentials that bode well for a diversified agricultural undertaking of the size contemplated for the Central Maui agricultural fields. If Mahi Pono is successful, Central Maui will be able to remain in cultivated agricultural open space, and be put into use in a manner consistent with numerous State and County land use plans and designations.

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Comment 45: *A&B's SEC filings inform their shareholders of the risk that plans for diversified farming on their Maui lands may not work out, even given the company's long history of farming. A&B's 2015 SEC filing states:*

*The Company is currently evaluating several categories of replacement agricultural activities in the transition to the diversified model, including but not limited to energy crops, agroforestry, grass finished livestock operations, diversified food crops/ agricultural park, and orchard crops. **There is no assurance that the Company's replacement agricultural activities will be economically feasible or improve the Agribusiness segment's operating results.***

The EIS needs to provide the same disclaimer, and not predicate the entire success of Mahi Pono farming operations on how much east Maui water is sent to Central Maui.

Response 45: A&B's SEC filings are not within the scope of the EIS, nor does HRS Chapter 343 require such a disclaimer about the financial feasibility of a particular undertaking. Please see Response #18 regarding the scope of the EIS. It should also be noted that the SEC filings you mention in your comment were made before the Central Maui lands were sold to Mahi Pono, which as discussed in Response #44 above, is an entity whose team has significant farming experience.

It seems entirely evident that the Mahi Pono farm plan will require water, and the more reliable access to water that can be provided to the Central Maui agricultural fields, the greater the ability for Mahi Pono (or any farmer) to be responsive to the ever-changing agricultural market demands while also being sensitive to the existing local farming community. However, the EIS provides two versions of the Mahi Pono farm plan. One version anticipates farming under a Water Lease that authorizes diversions in the amount consistent with the CWRM D&O. The other version contemplates the farm plan in the event that there is no Water Lease. Please see Chapters 2 and 3 of the EIS. As such, the EIS does not "predicate the entire success of Mahi Pono farming operations on how much east Maui water is sent to Central Maui" as stated in your comment.

Please also note as discussed in Response #44 above that, while success can never be predicted for any business or organization, Mahi Pono is well positioned to take on the challenge of putting Central Maui back into sustainable agriculture.

Comment 46: *The DEIS asserts that Mahi Pono needs a long-term lease in order to make its investment in agriculture. Does Mahi Pono not understand that even with a long-term lease, CWRM could amend the in-stream flow standards and reduce the amount of water flowing to*

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central Maui? Does Mahi Pono understand that one of the reasons for studying West and East Wailuaiki is so that CWRM can understand the impact of diversions and if necessary order more water to be restored for the health of the streams?

Response 46: The EIS assesses impacts from alternatives to the proposed Water Lease and one of those alternatives is the Reduced Water Volume alternative. In other words, an alternative where authorized diversions are less than would otherwise be permitted under the CWRM D&O. As such, the potential for changes to authorized diversion amounts is addressed in the EIS, whether those changes are made pursuant to additional amendments to the IIFS for East Maui streams established by CWRM or for any number of other reasons.

Nevertheless, a long-term Water Lease is being sought to support Mahi Pono's substantial investment in farming, including the planting of orchard crops (citrus, macadamia nuts, coffee, avocado, etc.) which take many years to reach full production. Over 80% of the land in crop will be used for orchards, which reflects a long-term commitment to Hawai'i agriculture. We also note that the EIS contemplated and assessed an "Alternative Lease Duration" option within Chapter 3 of the EIS, as well as a "Reduced Water Volume" alternative.

It is acknowledged that under the CWRM D&O, CWRM determined that Waiohue and West Wailuaiki streams were to remain un-diverted as habitat reference streams, explaining that "*We have much to learn about stream restoration and the conditions needed for recruitment of native fauna into streams that have been diverted for over one hundred years. These un-diverted habitat reference streams will provide critical baseline data to validate and improve the theoretical restoration models that will inform future decisions.*" CWRM D&O at v. It is also acknowledged that the order section of the D&O states:

The Commission has no authority over DAR and therefore requests that the Board authorize DAR to monitor whether or not the flows implemented for East Wailuaiki of H90 and full restoration of West Wailuaiki have resulted in any difference in the biology or ecology of these two streams as compared to the other.

CWRM D&O at 270.

In summary, it is acknowledged that CWRM intends for these two streams to be studied in the future in combination with one another to see the impact, if any, of full restoration versus habitat restoration (CWRM D&O, COL 135). The results of this comparison are unknown to anyone at this juncture, as are its implications.

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Comment 47: *The EIS needs to provide accurate information about the benefits of Central Maui farming. The numbers provided for proposed Mahi Pono profits and past performances of HC&C sugar do not seem logical: “Mahi Pono farm plan is projected to generate more than 338 pounds per year of crops, generating \$155.9 million per year in annual food sales and \$329.5 million per year in combined direct and indirect sales.” (Executive Summary, p.v.). This would mean each pound of crop brought a return of \$461,242.*

Response 47: Please note that the production figure in the Executive Summary of the Draft EIS should read 338 million pounds per year, not 338 pounds. This was a typo and has been corrected in the Final EIS, including the Executive Summary as shown on page xii.

However, please note that Section 4.7.3 and Section 4.7.4 of the Draft EIS correctly describes accurate information regarding the benefits of the Mahi Pono farm plan. At Section 4.7.3:

At full operations, the Mahi Pono farm plan will cause a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops. Annual sales are expected to reach \$155.9 million. The pastures would support a cattle herd of about 7,300 cow-and-calf animal units, produce over 4,300 calves per year, and generate revenues of about \$4.8 million per year. The solar farm would generate about 82,125 mW of electricity per year, with revenues of about \$8.2 million per year. Combined farm and energy revenues would reach \$168.9 million per year in direct sales (far exceeding the 2006 revenues from sugar production of \$101 million, and the \$116 million average for the 2008 to 2013 period).

And at Section 4.7.4:

At full development, the Mahi Pono farm plan would result in a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops.

Impacts related to agricultural economics are discussed in detail in Section 4.7.4 of the EIS based on findings in Appendix I. Please refer to Section 4.7.4 and Appendix I to see discussions regarding the numerous benefits anticipated as a result of the Proposed Action. In summary, at full build-out, the Mahi Pono farm plan is anticipated to produce a significant amount of crops

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for both local consumption and export generating significant beneficial economic and fiscal impacts, providing numerous direct and indirect jobs, and State and County tax revenues.

Comment 48: *Table 6 in Appendix I lists “recent sugar” payroll of \$68,000,000 a year. HC&S had 675 workers when they announced that sugar would shut down in 2016. Did each of those workers earn \$100,740 a year (\$68 mil divided by 675)? That seems highly unlikely. The potential “recent sugar profits” presented in Table 6 of Appendix I also needs additional information. A&B’s SEC filings (10K reports) show a very different range of “profits” from 2009 to 2015, the most recent era of sugar growing. Only 4 of those 7 years did the sugar operations show a profit (2010-2013) The other three years showed sizable losses. Only one year (2011) had a profit of \$22 mil. The average of the 4 profitable years was \$14.9 mil. The figures in the EIS should reflect accurate amounts, not cherry pick one promising year. This incorrect information must be fixed in a new DEIS.*

Response 48: As described in Section 4.7.4 of the Draft EIS and shown in Table 5 (not Table 6) of Appendix I, the employment figure for Recent Sugar (Years 2008 to 2013) was 620 direct jobs earning \$34.3 million per year, or an average of \$55,295 per job. The \$68 million payroll is for both direct and indirect jobs.

The scenario “Recent Sugar” covers the years 2008 to 2013, and the profits are derived from both direct sales and indirect sales related just to HC&S (Maui sugar operations). The numbers in A&B’s 10-K reflect not only the Maui sugar profits, but also the company’s total agribusiness operations combined, including Kauai Coffee, KT&S, A&B Fleet Services, and A&B’s renewable energy projects, which were much broader than just HC&S. Therefore, the numbers are not comparable. The figures used in the EIS were not “cherry-picked” but rather chosen to reflect just Maui sugar operations, as is relevant for this EIS

Operating profits for the sugar operations were estimated at 10% of direct and indirect sales—a common approach for estimating profits. The purpose of estimating profits is to estimate corporate income tax to the State. For Recent Sugar (Years 2008 to 2013), corporate taxes were about 4% of total State revenues derived directly and indirectly from sugar operations (\$0.22 million per year ÷ \$5.08 million, Table 6 of Appendix I).

Comment 49: *Appendix I assumes that East Maui now has plenty of water due to the 2018 CWRM Decision. It also assumes that dry, windy central Maui is the best place for crops to insure food security for Maui’s future, thereby rationalizes without information that all available east Maui stream water should be sent there to support agriculture. The EIS needs to have an updated analyses of the farming potential of the east Maui area. The current analyses in Appendix I that concludes only 44 acres is available for kalo growing and 35 acres for truck*

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farming in all of East Maui. These figures are based only on information from the communities that Native Hawaiian Legal Corp represented during the East Maui IIFS petition. There is far more land available for both kalo and farming in east Maui in the Huelo lease area.

Response 49: As summarized Section 4.7.4 of the Draft EIS and Appendix I, “East Maui Water Lease: Agricultural and Related Economic Impacts”

Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

The basis for this finding is given in Subsection 5.a of Appendix I (pp. 13 to 22), along with Figures 4 to 12 (pp. 70 to 78) in Appendix I.

Without sufficient water to irrigate crops, most of Central Maui would change from green expanses of farmland to fire-prone dry-land grasses. However, since diversified crops require much less water than sugarcane, there is sufficient water to restore many of the streams in East Maui and to grow crops in Central Maui.

Regarding your comment about farming in East Maui, Appendix I and Section 4.7.4 of the Final EIS have been updated based on comments received on the Draft EIS regarding taro farming in East Maui as shown on pages 4-288 to 4-293. Specifically, the updated analysis for taro farms in East Maui (from the Honopou to Nāhiku portions of the License Area, including those farms using water from the non-petitioned streams not subject to the CWRM D&O, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing/historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro farms. This acreage is assumed for all lease alternatives since nearly all potential new taro cultivation is assumed to draw water from fully restored taro streams which will have the same flows under all alternatives.

The updated analysis for truck farms in East Maui from the Honopou to Nāhiku portions of the License Area, including those farms using water from the non-petitioned streams not subject to the CWRM D&O, are assumed to cover about 45 acres by 2030. Ten acres were added to the

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truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This acreage is assumed for all alternatives since nearly all potential new cultivation is assumed to draw water from fully restored taro streams which will have the same flows for all alternatives.

Comment 50: *The EIS incorrectly concludes that no additional stream water would be needed in all of east Maui, based upon the limited information available from the CWRM contested case.*

That case did not address a dozen other streams. The many communities of the Huelo lease area have wide swarths of fertile lands and no public water supply, resulting in unmet water needs by both Native Hawaiian and non-Hawaiian farmers.

Response 50: As discussed in Response #49 above, the analysis presented in Appendix I as it relates to the East Maui kalo and truck farms included the non-petitioned streams not covered by the CWRM D&O, which includes the communities of the Huelo portion of the License Area. Specifically, as noted above in Response #10, the CWRM did not address or amend the existing IIFS for 12 streams which flow through land designated as agriculture in the communities of Huelo and Kailua. The CWRM, did, however, address and provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, restoration for taro farming. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Comment 51: Segmentation

A&B's 2015 10K statement acknowledges that the the four state lease areas supplied "approximately 58 percent of the irrigation water used by HC&S" and "A&B also holds rights to an irrigation system in West Maui, which provided approximately 15 percent of the irrigation water used by HC&S over the last ten years." This would indicate that 27 % of irrigation water came from A&B wells.

Response 51: Water from the West Maui irrigation system is beyond the scope of the EIS. That water does not contribute to the irrigation of the Central Maui agricultural fields (the approximately 30,000 acres). The EIS looks at the water diverted from East Maui streams through the EMI Aqueduct system. The EMI Aqueduct System does not comingle water with the West Maui irrigation system as they are completely separate systems. Moreover, the source of water for the West Maui irrigation system comes from privately owned lands and is not from State-owned lands. Hence, the West Maui water is not be included in this analysis.

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Draft EIS Section 2.1.4 (Central Maui Field System) explains:

In addition to the surface water imported from the EMI Aqueduct System to the Central Maui field irrigation system, the irrigation infrastructure includes fifteen brackish water wells that can supplement surface water to approximately 17,200 acres of the plantation at the lower elevations (CWRM D&O, FOF 738). These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739).

Draft EIS Figure 2-5 (Central Maui Infrastructure Map) identifies the wells in the Central Maui agricultural fields. However, please note that Section 2.1.4 has been revised in the Final EIS to more accurately describe the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono, and clarifies that only 10 of the 15 wells are on Mahi Pono lands and thus available for use by Mahi Pono, as shown page 2-25 of the Final EIS.

The reference to 15 brackish wells was derived from the CWRM D&O, FOF 738, as that was the number of brackish wells that A&B utilized during its sugar cane operations. However, one of the 15 wells referred to, State Well No. 5128-002, does not serve the Central Maui agricultural fields and four of the other brackish wells are on lands that are not owned by Mahi Pono. As such, Mahi Pono has access to only 10 such wells. Draft EIS Figure 2-5 (Figure 2-7 in Final EIS) has been revised, as shown on page 2-25 of the Final EIS, to more accurately depict the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields.

Comment 52: *The EIS needs to include a list and map of the A&B/Mahi Pono wells available to help irrigate the Mahi Pono fields and the latest chloride tests and pumping abilities of those wells.*

Response 52: Please see Response #51 and page 2-24 of the Final EIS referred to therein regarding a figure depicting the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields.

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Letter to Ms. Marti Townsend

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September 3, 2021

In response to your request for chloride numbers for the Mahi Pono wells, please see the table below, which has been added to Section 4.2.2 of the Final EIS as shown on page 4-75.

State Well No.	TMK Number	Installed Pump Capacity (MGD)	Typical Range of Chlorides (MG/L) from 2003 through 2014 ¹	CWRM Delineated Aquifer System
4825-001	(2) 3-8-004:001	20.448	225 to 350	Paia
5226-002	(2) 3-8-006:001	24.048	350 to 550	Kahului
5224-002	(2) 3-8-003:004	15.120	350 to 550	Paia
5323-001	(2) 3-8-001:006	20.016	No data	Paia
5424-001	(2) 3-8-001:007	5.760	400 to 700	Paia
5522-001	(2) 2-5-005:021	8.640	350 to 525	Paia
5422-001	(2) 2-5-005:054	10.080	350 to 525	Paia
5422-002	(2) 2-5-005:020	11.664	325 to 475	Paia
5321-001	(2) 2-5-005:019	30.240	400 to 1600	Paia
5520-001	(2) 2-7-004:032	10.080	900 to 1600	Haiku

Please note that the salinity levels fluctuate and therefore a range was provided.

Comment 53: *The EIS states that Mahi Pono's farm plan will use less water than the HC&S sugar operations and provides elaborate tables in Appendix I. The Mahi Pono Farm Plan is one plan, which includes around 34,000 acres irrigated by both east Maui and west Maui stream waters. The EIS content rules do not allow for segmentation of separate parts of the same project. The 4,000 acres of fields irrigated by West Maui Water should be included in the overall analyses of how much water is needed from what source to have a viable Mahi Pono Farm Plan.*

Response 53: It is incorrect to say that the Mahi Pono farm plan is one plan that is irrigated by both East Maui water (through the EMI Aqueduct System) and West Maui stream water. The

¹ There is limited salinity data prior to 2003 and after December 2014, surface water for irrigation use rapidly declined as A&B ramped down operations prior to closing in 2016.

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September 3, 2021

Central Maui agricultural fields owned by Mahi Pono and repeatedly identified in the Draft EIS are comprised of approximately 30,000 acres of land and can be irrigated by water from the EMI Aqueduct System. The Mahi Pono farm plan, which is described in numerous places in the Draft EIS, including Table 2-1 (Mahi Pono Farm Plan) provides a plan for diversified agriculture over approximately 30,000 acres in Central Maui. Draft EIS Table 2-1 also indicates what water is expected to come from surface water through the EMI Aqueduct System and what amounts are expected to come from groundwater. We respectfully disagree with your view that the EIS, which fully assesses the impacts of the proposed Water Lease, the water from which would be used for irrigation purposes in Central Maui, and domestic and irrigation purposes in Upcountry Maui, is taking a segmented approach to environmental review. The Proposed Action is not a part of a larger action and there is no improper segmentation. Segmentation occurs when an applicant proposes more than one "action" that triggers the environmental review requirements under HRS § 343-5. If only one action is proposed, there cannot be segmentation. Here, there is only one "action" triggering Chapter 343 review -- the proposed Water Lease. There is no "action" being proposed with respect to the 4,000 acres in West Maui. The 4,000 acres in West Maui are part of an entirely separate farming operation, and that farming operation is not irrigated by the EMI Aqueduct System and not dependent upon the Water Lease. Further, the 30,000 acres of former sugarcane fields that are being converted to diversified agriculture under Mahi Pono's farm plan will not receive any diverted stream water from West Maui, and the 4,000 acres in West Maui will not receive any diverted stream water from East Maui. Moreover, the source of water for the West Maui Irrigation System comes from privately owned lands and is not from State-owned lands. The West Maui fields are a stand-alone agricultural operation with clear independent utility and are outside of the scope of this EIS for the Water Lease.

Comment 54: *A new DEIS needs to clearly state the overall Mahi Pono Farm Plan and indicate what amounts and proportions of water for the farm plan will come from (a) the four licensed area in east Maui, (b) the area west of the licensed area that feeds the EMI ditch system streams, (c) West Maui streams and (d) Mahi Pono wells."*

Response 54: To address item (c), as explained in Responses #51 and #53, West Maui streams are irrelevant to the analysis in this EIS, as no West Maui stream water is associated with the proposed Water Lease or irrigation of the Central Maui agricultural fields and Mahi Pono's West Maui fields are located outside the service area of the EMI Aqueduct System and are therefore not served by any streams within the License Area.

Regarding your item (a), as noted in the CWRM D&O, the measurements EMI takes are at Honopou Stream and Māliko Gulch, however, for the purpose of measuring the aggregate flow from the entire License Area, the Honopou Stream measurement reading was used. As discussed in Draft EIS Section 2.1.2 (East Maui/License Area):

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With the issuance of the Water Lease under the Proposed Action, the EMI Aqueduct System would divert only the maximum allowable amount under the CWRM D&O from streams within the License Area, which is estimated to be approximately 87.95 mgd.

Regarding your item (b), the projected amount of surface water from the limited area of private land west of the License Area is also addressed in the EIS, including in Section 2.1.2, as follows:

The EMI Aqueduct System is estimated to divert an additional 4.37 mgd from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Māliko Gulch. Thus, an estimated total of approximately 92.32 mgd would be conveyed to supply the MDWS for users in Upcountry Maui, Nāhiku, and the agricultural fields in Central Maui.

Hence a total of approximately 92.32 mgd of stream surface water is estimated to be available for diversion under the Proposed Action. Approximately 7.1 mgd will be taken from that amount to supply the MDWS.

Regarding your item (d), as discussed in Response #52 above, Mahi Pono owns 10 wells that can serve the Mahi Pono agricultural fields in Central Maui, all of which are located within the Pā‘ia, Kahului and Ha‘ikū aquifers. Collectively, those 10 wells have an installed pump capacity of approximately 156 mgd. However, the installed pumping capacity is not an indication of how much water can be reliably provided by these wells. Under the Proposed Action, Mahi Pono is assumed to be able to pump approximately 21.31 mgd of groundwater. While this number is less than what was pumped during sugar cane cultivation, under the Proposed Action, the recharge of the underlying aquifers in Central Maui that provide the source for these brackish wells will be less than it was during sugar cultivation, due to less surface water flowing to the Central Maui agricultural fields. Furthermore, while high salinity water could be used to irrigate sugar cane, it cannot be used for many other crops. Hence, the ability of these brackish wells to supplement Mahi Pono’s water needs is constrained.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.² Should you wish to request a copy of the Final EIS or portions thereof, please

² Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC’s website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Letter to Ms. Marti Townsend

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: simon@homallc.com
Sent: Wednesday, November 6, 2019 11:35 PM
To: ian.c.hirokawa@hawaii.gov
Cc: Public Comment
Subject: Hui 'O Mālama 'Āina DEIS for the East Maui Water Lease questions and comments
Attachments: Drought Information Statement_10-10-19.pdf; DEIS-Pg. 87-88-No Alternative Ownership Solutions.pdf; journal-of-water_Cal_Water_prices.pdf; Nature-Conservancy-EMI Delivers 60Bn_Gal-Yr..pdf; DEIS-Pg. 89-90-Perpetual Territory Lease.pdf; Submitted-Questions-11.6.19.pdf

TO: Applicant: Alexander & Baldwin Inc. (A&B)/East Maui Irrigation Company, Limited (EMI),
Collectively referred to as "A&B" waterleaseeis@wilsonokamoto.com

Consultant: Mr. Earl Matsukawa AICP, waterleaseeis@wilsonokamoto.com (808) 946-2277,
1907 S. Beretania Street, Suite 400, Honolulu, HI 96826

Approving Agency: Mr. Ian Hirokawa, ian.c.hirokawa@hawaii.gov
And Suzanne Case, Chairperson, Hawai'i DLNR
151 Punchbowl Street, Honolulu, Hawai'i 96813

FROM: Simon Russell email: simon@homallc.org

PO Box 92, Makawao, Hawaii 96768

November 6, 2019

RE: East Maui Water Lease Draft-EIS
Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomano, + Huelo License Areas

Aloha Mr. Earl Matsukawa & Mr. Ian Hirokawa,

My name is Simon Russell, Managing Member for Hui 'O Mālama 'Āina. Mahalo for receiving these questions and comments. As a resident of Upcountry Maui, and a career farmer, truly I look forward to a future of adequate food production across Hawaii that has the capacity to sustain our citizens, should that need ever arise. Additionally, It would be very good if sufficient revenues were generated from the sale of public trust waters, so that watershed ecosystems restoration and efficient management can occur in as soon a timeframe as is possible.

Mahalo to the applicant for this tremendous body of very detailed and descriptive work. It's 2700 page entirety is impressive and quite overwhelming. It would be very helpful if the applicant were to resubmit this application in order for our Maui community and its very time challenged county leadership to fully read and understand this DEIS. A supporting fact for that magnanimous gesture is that perhaps many of the questions people will ask regarding the applicant's submittal and the proposed action is that their questions will be answered if our community and it's leaders have the time needed to fully read this tome of a document. This could actually save the applicant time in the long run, as it will reduce the amount of time needed to respond to questions, and with holidays approaching, that should be a serious consideration.

While myself and a large portion of my agriculture ohana are holding our breaths hoping that Mahi Pono Holdings LLC and its many subsidiaries will do the right thing and make Maui agriculture it's main source of revenue, to me the signs coming out of our community are not encouraging. My perception of their staying power is that in many cases, the company is already wearing out its welcome ion the first year. This company, and its partners EMI and A&B have repeatedly refused to appear in person at county council meetings regarding this very lengthly and significant Draft Environmental Impact Statement, as well as refusing to engage with the County Board of Water Supply, despite several cordial written requests in that respect.

I look forward to reading your responses to these questions I have carefully drafted and am presenting to you.

Throughout the line of questioning pursuant to the DEIS East Maui Water Lease, I am attaching the following 5 documents to my email in support of the line of questioning:

1. National Weather Service Drought Information Statement from October 2019.
2. DEIS Section 3.1.2 Aqueduct Ownership (Pages 87 – 88) regarding no alternative scenarios for ownership of the means of delivering water out of the East Maui license areas.
3. DEIS Section 3.3 No Action (Pages 89-90) regarding a "Perpetual water lease" Issued in 1938 by the Territory of Hawaii.
4. The Nature Conservancy Statement regarding the East Maui Irrigation Company supplied 60Bn Gallons/year of clean water to end users.
5. Credible source of water prices in California to compare and contrast Hawaii's \$5/MG to California's \$373 + Delivery/ Acre foot for agriculture water.

Here is a list of questions I kindly request complete answers to:

1. What happens if/when the farming activity associated with the attainment of this lease ceases for any length of time?
2. Will The applicant refile the DEIS to allow more time for review of this significant document and its ultimate consequences?
3. How many local farmers/farming entities has Mahi Pono contacted to see if their very large business will affect those smaller farming entities revenues or labor pools?
4. What economic impact does Mahi Pono foresee its agriculture operations having on the local famers growing identical or similar crops?
5. What impact will the "Community Farms" (that Mahi Pono is building and populating with farmers) that it will be delivering water to have on the existing Kula Agriculture park?
6. What impact will Mahi Pono's agriculture operations have on the availability of farmer laborers on Maui?
7. How many farm workers will come from Maui, and how many off island workers will our communities be expected to absorb?
8. Where will temporary laborers come from?
9. How many homes will be needed to house the Mahi Pono Work force in the next 5 years?

10. What happens with the water lease if/when the farming activity associated with the attainment of this lease ceases for over one year?
11. What happens with the water lease if/when the farming activity associated with the attainment of this lease ceases for more than 3 years?
12. Why should the state of Hawaii grant a 30-year lease when Maui has been experiencing prolonged D3(Extreme) drought levels(NWS Drought Document Attached), and prolonged D2(Severe) drought levels?
13. Are climate change models predicting adequate levels of rainfall to sustain the operations as described in this 2700-page EIS?
14. What is the applicant doing with regards to considering the planting and use of water conservation practices?
15. What is the average demand per acre for crop use during the term of this lease?
16. What amounts of water will EMI/A&B/Mahi Pono et. Al. allocate to riparian areas and domestic areas should the lease be in effect, and prolonged extreme drought does not supply enough water for the stated Mahi Pono farming operations:
 - a. What happens to the domestic users supply, how much will be available?
 - b. How much water will be available to the agriculture users that are dependent upon county waters?
17. With the value of commercial agriculture water in California being approximately \$1140 per Million Gallons, why should the state of Hawaii sell it at \$5/ Million?
18. In times of drought, what price should the state of Hawaii charge for its water? California Tripled its prices for water in the 2014-2015 drought season. Can Mahi Ponos business plans bear water price spikes due to drought conditions? If so, for how long?
19. Here is a California water price update (Attached):
<https://journalofwater.com/jow/improved-water-supplies-lead-to-drop-in-agricultural-water-prices/> 1 acre foot has 326,000 gallons of water .2018 California Central Valley water prices were \$373.16 / Acre foot which equals about \$1.14/ KGal. Interestingly, the California water user also pays an operations and maintenance fee of \$76.84/A.F. This comes out to 24 Cents/KGal in maintenance fees.
 In California the delivery cost of 1MGal is \$240 or \$373/Acre Foot . This means that at California rates plus delivery, 1 MGal of agriculture water is costing \$1,380, which is 276 times the price set by Hawaii's BLNR. This takes this line of questioning to the 2700-page DEIS Document Section 3.1.2 (Attached): Aqueduct Ownership. **Please explain you position on other entities bidding on this lease, and paying the State of Hawaii a fair market price?**
20. Explain Section 3.3 (Attached) and the legal standing that A&B had under the 1938 lease in "Perpetuity" as relates to the fact that the territory is now non-existent? Does that contract still have any legal standing in the State of Hawaii under our Constitution and its Public Trust Doctrine? Please provide a copy of that 1938 perpetual East Maui water lease document for evidence of the agreement.
21. Please explain the way that water reaches the 36,000 "Upcountry "Users through the Kahakapao, and Pi'iholo reservoirs.
22. Please explain exactly why the Kahakapao reservoir was built, and what if any restrictions that there are for domestic water use.
23. Please explain why EMI is permitted to divert stream flow on its private property without a lease, license, or a permit, Vs. on State owned lands where it does need a permit or a lease to divert water into the delivery system.
24. Please explain if Upcountry Maui's demand for water could be met with source from Waikamoi, rather than pumping from Kamole Weir during drought time. The Nature Conservancy claims on their website that 60 Bn Gallons of clean water flows out of EMI's delivery systems Annually, which is 164,383,561 gallons/ day.

25. At California rates, the State of Hawaii could profit by \$82M / year if it took over the system. Why is this not a viable alternative to a foreign pension fund profiting from our public trust resources?
26. If A&B sold 50% of the EMI to Mahi Pono, what would it take for it to consider selling it's remaining 50% to a local water utility to ensure that Hawaii's water resources are well cared for.
27. Will EMI/A&B/Mahi Pono consider placing housing in the watershed areas so that consistent and regular maintenance of roads, ditches, controls and aqueducts can be most efficient?
28. Explain any plans to develop more water resources from East Maui's watersheds.
29. Please explain how the ditches will be maintained, especially with regards to the use of pesticides for weed control.
30. If pesticides used for controls leech, seep, or runoff into the Upcountry water system what will EMI do?
31. What exactly is the applicant doing to build trust in the community that relies on the water that it is asking to use?
32. What exactly is the applicant doing to communicate with local and county regulatory authorities regarding this DEIS and future developments around water use?
33. How does profiting a Canadian pension fund support the intent of Article XI Section 7 since Canadians are not our citizens, and clearly water and its benefits should be conferred to Hawaii citizens, not a foreign corporation or pension fund.

In Conclusion I would like to share these comments with you:

1. Hawaii will be much better off controlling its own water, obeying the public trust doctrines specific commands and returning any profits to the watersheds that make this life giving water. He who controls the water controls the future.
2. Giving our waters and related revenues away to a foreign pension fund or other investor is not a sound financial plan for the state of Hawaii. Selling 90 MGD from East Maui at the current agriculture rate of \$1.10 would equal \$36 M/yr. If farmers on Oahu can make profits at higher (approximately double) rates than Maui's and California's rates are hundreds of times higher, it is not financially prudent for the State of Hawaii to give away such a precious and sacred resource almost for free (\$5/ MGal).
3. Lastly, it will take decades to transition from where we are now to whatever is the prevailing paradigm that our future becomes. Lets all look to the BLNR and the CWRM as a guidepost to realize the commands of the Constitution Article XI Section 7:
Section 7. The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

It is incumbent upon you and your agencies and organizations to support the watersheds of Hawaii so that they may regain their capacity to supply abundant and life-giving Wai, but you all must realize that the watershed ecosystems need to be restored to make that possibility a reality.

Submitted with hope for our collective future and our sacred Wai resources,

Simon Russell

Managing Member: Hui 'O Mālama 'Āina LLC

Ola I Ka Wai



On the web: <http://www.homallc.com>

Phone: (808) 268-6132

Email: Simon@homallc.com



Virus-free. www.avg.com

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27. Will EMI/A&B/Mahi Pono consider placing housing in the watershed areas so that consistent and regular maintenance of roads, ditches, controls and aqueducts can be most efficient?
28. Explain any plans to develop more water resources from East Maui’s watersheds.
29. Please explain how the ditches will be maintained, especially with regards to the use of pesticides for weed control.
30. If pesticides used for controls leech, seep, or runoff into the Upcountry water system what will EMI do?
31. What exactly is the applicant doing to build trust in the community that relies on the water that it is asking to use?
32. What exactly is the applicant doing to communicate with local and county regulatory authorities regarding this DEIS and future developments around water use?
33. How does profiting a Canadian pension fund support the intent of Article XI Section 7 since Canadians are not our citizens, and clearly water and its benefits should be conferred to Hawaii citizens, not a foreign corporation or pension fund.

In Conclusion I would like to share these comments with you:

1. Hawaii will be much better off controlling its own water, obeying the public trust doctrines specific commands and returning any profits to the watersheds that make this life giving water. He who controls the water controls the future.
2. Giving our waters and related revenues away to a foreign pension fund or other investor is not a sound financial plan for the state of Hawaii. Selling 90 MGD from East Maui at the current agriculture rate of \$1.10 would equal \$36 M/yr. If farmers on Oahu can make profits at higher (approximately double) rates than Maui’s and California’s rates are hundreds of times higher, it is not financially prudent for the State of Hawaii to give away such a precious and sacred resource almost for free (\$5/ MGal).

3. Lastly, it will take decades to transition from where we are now to whatever is the prevailing paradigm that our future becomes. Lets all look to the BLNR and the CWRM as a guidepost to realize the commands of the Constitution Article XI Section 7: **Section 7.** The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

It is incumbent upon you and your agencies and organizations to support the watersheds of Hawaii so that they may regain their capacity to supply abundant and life-giving Wai, but you all must realize that the watershed ecosystems need to be restored to make that possibility a reality.

Submitted with hope for our collective future and our sacred Wai resources,

Simon Russell

Managing Member: Hui 'O Mālama 'Āina LLC

Ola I Ka Wai



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NATIONAL WEATHER SERVICE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Drought Information Statement

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AXHW70 PHFO 101959
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Drought Information Statement
National Weather Service Honolulu HI
959 AM HST Thu Oct 10 2019

...WET SEASON BEGINS WITH POCKETS OF EXTREME DROUGHT OVER PORTIONS OF MAUI AND THE BIG ISLAND...

SYNOPSIS...

Upper level disturbances combined with above normal low level moisture helped produce higher than average rainfall over many areas of the state. However, most of this rainfall missed the worst drought areas. These include localized areas of extreme drought, or the D3 category on the U.S. Drought Monitor map, over the northern and southern tips of the Big Island, and along the lower leeward slopes of Haleakala on Maui. Severe drought, or the D2 category, also existed along the lower Hamakua slopes on the Big Island, leeward Maui, the west half of Molokai, southwest Lanai, and all of Kahoolawe.

On Oahu, an increase in rainfall helped reduce the coverage of moderate drought, or the D1 category, along the lower leeward slopes of the island. At present, D1 conditions only remained over lower west Oahu from Ewa to Waianae.

SUMMARY OF IMPACTS...

Kauai
There are no drought areas in Kauai County.

Oahu
Satellite based vegetation health data indicated poor conditions from Ewa to Waianae. Conditions from Ewa to Hawaii Kai have improved over the past month.

Maui County
On Maui, pasture conditions remained very poor along most of the lower leeward slopes of Haleakala from Kihei to Kaupo. Serious brushfires continue to cause problems, most recently over the area from Maalaea to Ukumehame, which was under severe drought. Occasional afternoon heavy rainfall along a corridor from Ulupalakua to Makena helped improved conditions, but satellite based vegetation health data corroborated by some ground reports indicated that pasture conditions remained very poor from Kepuni to Kaupo, and from Wailea to Maalaea. On Molokai, satellite-based vegetation health data indicated poor conditions on the west half of the island. Vegetation conditions were also poor over southwest Lanai. While this area is normally dry, the satellite data, confirmed by visual inspection, showed that conditions appeared to be worse than normal.

Big Island.
Reports from ginger and sweet potato producers along the Hamakua Coast indicated that crop growth was being affected by the dry conditions. Insect damage has also increased. Ranchers operating in a localized area near South Point reported very poor pasture conditions despite much better conditions not too far away. These conditions were also detected by the satellite based data and corroborated by photos. In addition to these reports, the satellite-based data indicated that the worst vegetation conditions on the island were along the lower leeward slopes of the Kohala Mountains south of Hawi and near Upolu Airport.

DROUGHT MITIGATION ACTIONS

A Stage 1 Water Shortage declaration, issued by the Maui County Department of Water Supply, remained in effect for Upcountry Maui. The declaration requests residents to voluntarily reduce water consumption by 10 percent.

Assistance programs from the U.S. Department of Agriculture's Farm Service Agency have been implemented for farmers and ranchers in Maui County and the Big Island due to the ongoing drought conditions.

LOCAL DROUGHT OUTLOOK

The Long-Lead Hawaiian Islands Outlook issued on September 19 by the NOAA Climate Prediction Center shows probabilities favoring above normal rainfall across the state through the remainder of 2019. Probabilities also favor above normal temperatures across the state through the rest of 2019 due to the forecast of persistent above average sea surface temperatures around the Hawaiian Islands. The next long-lead outlook will be issued by the Climate Prediction Center on September 19.

For the rest of 2019, drought conditions should ease with the onset of the Hawaiian Islands wet season along with the forecast for above normal rainfall. The wet season weather systems provide a higher likelihood of rainfall getting into the leeward areas which currently have drought.

NEXT ISSUANCE DATE...

The next Drought Information Statement will be issued on November 8, 2019 or sooner if necessary in response to significant changes in conditions.

RELATED WEB SITES...

Additional information on current drought conditions may be found at the following web addresses:

U.S. Drought Monitor: droughtmonitor.unl.edu/
Hawaii Drought Monitor: dlnr.hawaii.gov/drought
USGS Hawaii - Recent Conditions: hi.water.usgs.gov/recent/index.html
Climate Prediction Center long-lead Hawaii outlook:
www.cpc.ncep.noaa.gov/products/predictions/90day/fxhw40.html
Hawaii Drought Impact Reporter: hawaii.droughtreporter.unl.edu/

ACKNOWLEDGMENTS...

Information for this product was compiled from a number of sources including the county boards and departments of water supply, U.S. and State of Hawaii agriculture agencies, the U.S. Geological Survey, and the media.

CONTACT INFORMATION...

If you have any questions or comments about this drought information statement, please contact:

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ditch systems, and the Central Maui field irrigation system has 48 major reservoirs¹. The combined storage capacity of these existing reservoirs is approximately 1,344 mg (Akinaka, 2019). Most of these reservoirs, however, have not been used since the closure of sugar in 2016 and others have not been used because they do not meet dam safety requirements. As a result, many will require extensive upgrades to put them back into service. These upgrades could cost between \$50 – 100 million (Akinaka, 2019). Obtaining permits to upgrade and repair these reservoirs will also be challenging due to current dam safety requirements. Assuming that the existing reservoirs can be restored to their full capacity of 1,344 mg, and the amount of flow available for irrigation under the Proposed Action is approximately 92.32 mgd, then the existing reservoirs could provide about 16 days of storage capacity.

The existing reservoirs are fed by the EMI Aqueduct System so they can be filled when the amount of water delivered exceeds the amount used. The EMI Aqueduct System, however, is not designed to capture and convey high-volume freshet flows which overwhelm and bypass the diversions. If such freshet flows (in excess of the IIFS standards under the CWRM D&O) could be captured, it could significantly increase storage capacity.

If an additional storage volume of 1,200 mg is assumed, an additional two weeks of flow could be provided at the rate of 82.36 mgd. Combined with the storage capacity of the restored and existing reservoirs, a total of about a month of storage would be available, which would provide a substantial supply to weather periods of low rainfall during the dry season. Moreover, since captured freshet flows would be used to replenish the restored and existing reservoirs between freshets, the period that stored water could be used could be extended even longer.

A single reservoir of this size (to hold 1,200 mg) could be located upstream of the Koolau Ditch within Hānawī Gulch. This area is preferable for the location of a reservoir to capture and store water because of its elevation and rainfall. The reservoir would be created by damming a ravine above the ditch so it can be fed by gravity flow and allow streamflow to continue in compliance with the CWRM D&O. Based on a rough estimate, a reservoir of this size would encompass about 30 acres with a 4,000 foot long dam structure standing approximately 150 tall at its highest point. (Akinaka, 2019). Construction of such a reservoir would be in the order of some \$300 million. (Akinaka, 2019). Dams are uniquely engineered structures that require knowledge and experience in dam safety, particularly how to safely handle water flows in and out of the structure through appurtenant features, as well as mitigating the hazards of water passing through the dam embankment itself (seepage). Dams sustain high hydrostatic water loads, which can result in failure of the embankment if they are not properly designed. (DLNR, The Hawai'i Dam and Reservoir Safety Program, FY 2017). It is very unlikely such a reservoir could be constructed as its environmental impacts would be considerable in terms of impacts to views and public safety concerns.

3.1.2 Aqueduct Ownership

During public scoping for the DEIS in 2016 and 2017, it was suggested that the EMI Aqueduct System should be brought under new ownership, without the further involvement of A&B and EMI, and potentially under public ownership. Ownership of the EMI Aqueduct System changed

¹ GIS data provided by the State Office of Planning does not include all 48 reservoirs within the Central Maui agricultural fields.

in January 2019 to include Mahi Pono, which intends to pursue diversified agriculture in Central Maui. Consideration of another change in ownership is too speculative at this point to warrant analysis. A change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action. As discussed elsewhere in this DEIS, EMI has been operating the EMI Aqueduct System since the start of construction in the 1870s. Few have the knowledge to operate and maintain this unique and complex system, consisting of approximately 388 separate intakes, 24 miles of ditches, and 50 miles of tunnels, as well as numerous small dams, intakes, pipes, 13 inverted siphons and flumes. Furthermore, the EMI Aqueduct System is not for sale, and forced acquisition of the system is projected to be prohibitively expensive, resulting in substantial costs to the public. For these reasons, this alternative is viewed as a highly speculative and unreasonable alternative, and one that would not meet the objectives of the Proposed Action. Therefore, it was dismissed from further review.

3.2 Alternative Analysis

3.2.1 Reduced Water Volume Alternative

The BLNR cannot authorize a lease that allows the use of more water than can be diverted under the CWRM D&O. However, the BLNR could elect to issue a water lease that authorizes the use of a lesser amount of water. Projections of the amount of government water available from the License Area at Honopou stream after taking into account the CWRM D&O, is approximately 87.95 mgd. This amount would be subject to further reduction in accordance with the DHHL reservation once called upon for use by the DHHL. The CWRM estimated that the amount of water potentially available after implementation of the CWRM D&O might be enough for about 90% of the irrigation needs for the approximately 23,000 IAL lands in Central Maui (although it is not clear if the CWRM D&O took into account the future DHHL reservation). However, there are approximately 30,000 agricultural acres in Central Maui (largely, but not exclusively, IAL lands), and Mahi Pono has expressed an intention to farm as much of that land as possible.

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. Under the Reduced Water Volume alternative, depending on the amount of water authorized under the Water Lease, the MDWS may receive no water from the Wailoa Ditch or some amount up to 7.1 mgd. The greater the reduction in the amount authorized under the Water Lease, proportionally less water will be available to the MDWS.

3.2.2 Water Lease With Different Terms

3.2.2.1 Alternative Lease Duration

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have

viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

3.2.2.2 Modified Lease Area

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

3.3 No Action

Under a 1938 agreement between the Territory of Hawai'i and A&B, A&B was given a perpetual right and easement to convey water through those portions of the EMI Aqueduct System located within State lands, and to divert the water so conveyed through the EMI Aqueduct System, and A&B granted the Territory a similar perpetual right and easement. This agreement is in place irrespective of the issuance of any Water Lease. The No Action alternative would result in no Water Lease being issued from the State. However, under the 1938 agreement and a related calculation involving isohyet analysis of rainfall patterns, it is understood that approximately 30% of the water in the License Area streams is derived from the privately owned lands. Therefore, the EMI Aqueduct System could continue to divert approximately 30% of the water available from the Collection Area, plus the 4.37 mgd from that portion of the Collection Area that is derived from privately owned lands outside of the License Area between Honopou stream and Māliko Gulch. Under the No Action alternative, it is assumed that an estimated total of 26.39 mgd is available to be diverted from that portion of the Collection Area east of Honopou stream, and approximately 4.37 mgd of surface water would be available from privately owned lands (i.e. not within the License Area) between Honopou stream and Māliko Gulch. Thus, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System under the No Action alternative would be approximately 30.76 mgd (Akinaka, 2019). This reduction in water would significantly limit Mahi Pono's ability to develop robust diversified agriculture in Central Maui, and would have associated detrimental impacts on food production and economic benefits that would be achieved under the Proposed Action.

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be

developed by the MDWS. At this point in time, it is unknown whether sufficient groundwater resources exist in Upcountry Maui to meet these water demands. It is anticipated that the development of alternative water-source infrastructure would be prohibitively expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment.

3.4 Comparative Evaluation of Reasonable Alternatives

Alternatives are to be evaluated based upon the extent to which they are able to satisfy the objectives of the Proposed Action. An EIS must include a comparative evaluation of the environmental benefits, costs, and risks of the Proposed Action and each reasonable alternative. The objectives of the action are to:

- Preserve and maintain the EMI Aqueduct System, including its access roads
- Continue to meet domestic and agricultural water demands in Upcountry Maui
- Continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses)
- Continue to serve community water demands in Nāhiku

A comparative evaluation of impacts to relevant environmental characteristics and the various alternatives is provided in the following section (the impacts analysis for the Proposed Action is provided in Chapter 4).

3.4.1 Topography

Neither the Proposed Action nor any of the alternatives are expected to have any significant effect on topography within the License Area because no topographic changes to the License Area are proposed under the Proposed Action or the alternatives. Some construction related to the preparation of the Central Maui agricultural fields for the Mahi Pono farm plan and related agricultural facilities is anticipated under the Proposed Action, and would likely take place under the Modified Lease Area alternative as well. The extent of Mahi Pono's implementation of its farm plan and related facilities under either the Reduced Water Volume alternative or the Alternative Lease Duration alternative would depend upon the degree of certainty required to warrant such investment.

3.4.2 Soils

East Maui

Neither the Proposed Action nor any of the alternatives are expected to have any significant effect on soils within East Maui because no changes are proposed under the Proposed Action or the alternatives. However, under the Modified Lease Area alternative, there may be some adverse impact to soils within the License Area through greater public access to and use of the License Area.

SHARE

the blue ‘opelu, a native lobelia.

TNC protects the native species that live in Waikamoi by managing the invasive weeds and animals threatening their survival. Our scarce funding goes towards on-the-ground land management, which is at the heart of what we do.

WHY TNC SELECTED THIS SITE

The East Maui watershed spans more than 100,000 acres across the windward slopes of Haleakala, the 10,000-foot dormant volcano that dominates the east side of Maui. This vast koa-`ohi`a forest is the last stronghold for 63 species of rare plants and 13 species of birds, seven of them endangered. The Conservancy established a preserve at Waikamoi, in the heart of the watershed, to provide a sanctuary for these birds and for hundreds of other native Hawaiian species.

WHAT TNC HAS DONE/IS DOING

Waikamoi Preserve became a reality in 1983 when the Haleakala Ranch Company granted a conservation easement to TNC over 5,230 acres. The preserve was expanded in 2014 when landowner Alexander & Baldwin conveyed a conservation easement over an additional 3,721 adjacent acres, bringing the total to 8,951 acres and making Waikamoi the largest private nature preserve in the state. The preserve protects part of the 100,000-acre East Maui Watershed, which provides 60 billion gallons of clean water annually to Maui's residents, businesses and agricultural community. TNC, Haleakala Ranch and Alexander & Baldwin continue to work together (as part of the East Maui Watershed Partnership) to protect some of the best remaining forest in all of Hawai`i.

Waikamoi Preserve is managed in partnership with the State Department of Land & Natural Resources through the Natural Area Partnership Program.

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Improved Water Supplies Lead to Drop in Agricultural Water Prices

September 16, 2019

Westlands Water District, in California's Central Valley, administers a supplemental water transfer program to make up the difference between its available water supplies and the needs of its growers

each year. The cost of water, along with a charge to cover the cost of operations and maintenance (“O&M”), is passed along to the growers who receive the water.

In 2018, supplemental water transfers totaled 102,870 AF—with 20,321 AF provided under the Yuba Accord, and the remainder was Central Valley Project (“CVP”) water. The growers paid an average of \$373.16/AF for the water and \$76.84/AF in O&M charges to Westlands and San Luis & Delta Mendota Water Authority.

Water supplies have improved significantly since the drought emergency ended. In 2018, South-of-the-Delta agricultural water users received CVP allocations of 50%, and water prices are about 1/3 of what they were during the peak of the drought. There were no leases in 2017, when allocations were 100%.

Prices ran up to approximately \$1,100/AF in 2014 and 2015, when CVP allocations for agricultural water users were 0%. In 2016, when allocations were at 5%, prices for supplemental leases were \$641.30/AF. In 2013, the final CVP allocation for South-of-the-Delta agricultural users was 20%, and prices averaged \$360/AF. The historical average price for the period from 2000-2012 (prior to the California drought) was \$198/AF.

Written by Marta L. Weismann

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10238-04
September 3, 2021

Mr. Simon Russell
Hui 'O Mālama 'Āina
simon@homallc.org

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'ānae, Honomanū and Huelo License Areas

Dear Mr. Simon Russell:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'ānae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *As a resident of Upcountry Maui, and a career farmer, truly I look forward to a future of adequate food production across Hawaii that has the capacity to sustain our citizens, should that need ever arise. Additionally, it would be very good if sufficient revenues were generated from the sale of public trust waters, so that watershed ecosystems restoration and efficient management can occur in as soon a timeframe as is possible.*

Response 1: Your comments are acknowledged. As discussed in Section 2.1.4 of the EIS, the Mahi Pono farm plan will support food sustainability goals for the State. See also Section 5.2 of the EIS discussing how the Mahi Pono farm plan supports Governor Ige's Sustainability Initiative. Section 4.7.4 of the EIS further explains that at full operation, the Mahi Pono farm plan is anticipated to generate approximately 65% of total farm (crops and cattle) sales from within the State market and approximately 35% of total farm sales from exports. However, the Hawai'i market is too small to use all of the farm products expected to be produced on the Central Maui agricultural fields, and thus some export is necessary. Section 2.1.4 of the Final EIS has been revised to include additional information on Mahi Pono's farm plan, as shown in pages 2-28 and 2-32.

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Letter to Mr. Simon Russell

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The rental payments due under the Water Lease will be distributed into the State Special Land Development Fund (as is done for payments due on all the other leases and revocable permits in the State). The Office of Hawaiian Affairs (OHA) receives 20% of the revenue generated from each lease while the Department of Hawaiian Home Lands (DHHL) receives 30% of the revenue generated, as discussed in Section 4.7.3 of the EIS. However, please note that the State of Hawai'i Department of Land and Natural Resources (DLNR) administers the Fund, i.e., decides how to use the revenue generated.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under Hawai'i Revised Statutes (HRS) § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses priority outcomes essential to maintain or restore biological integrity of the watershed. The goals of the watershed management are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Furthermore, as described in Section 2.1 of the EIS, A&B was a founding member of the East Maui Watershed Partnership (EMWP). Under the Proposed Action, it is anticipated that the Water Lease lessee will continue to pursue watershed management activities either through an existing watershed management plan or a newly developed watershed management plan or some combination of both. The existing EMWP Management Plan was prepared in July 2009 and amended in July 2018, attached to the EIS as Appendix O. The EMWP Management Plan describes the watershed resources such as water, cultural / physical resources, native flora and fauna, and recreational resources. The EMWP Management Plan identifies the watershed threats and management objectives for the East Maui Watershed.

Comment 2: *Mahalo to the applicant for this tremendous body of very detailed and descriptive work. Its 2700 page entirety is impressive and quite overwhelming. It would be very helpful if the applicant were to resubmit this application in order for our Maui community and its very time challenged county leadership to fully read and understand this DEIS. A supporting fact for that magnanimous gesture is that perhaps many of the questions people will ask regarding the applicant's submittal and the proposed action is that their questions will be answered if our*

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September 3, 2021

community and its leaders have the time needed to fully read this tome of a document. This could actually save the applicant time in the long run, as it will reduce the amount of time needed to respond to questions, and with holidays approaching, that should be a serious consideration.

Response 2: Your comment is acknowledged. While the EIS is somewhat lengthy due to the numerous technical studies, please note that the comment period is set by statute, HRS § 343-5, and there is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comments were received during the statutory comment period.

Comment 3: *While myself and a large portion of my agriculture ohana are holding our breaths hoping that Mahi Pono Holdings LLC and its many subsidiaries will do the right thing and make Maui agriculture its main source of revenue, to me the signs coming out of our community are not encouraging. My perception of their staying power is that in many cases, the company is already wearing out its welcome ion the first year. This company, and its partners EMI and A&B have repeatedly refused to appear in person at county council meetings regarding this very lengthy and significant Draft Environmental Impact Statement, as well as refusing to engage with the County Board of Water Supply, despite several cordial written requests in that respect.*

I look forward to reading your responses to these questions I have carefully drafted and am presenting to you.

Response 3: Thank you for your carefully drafted questions. Regarding your comment about Mahi Pono making agriculture its main source of revenue, Mahi Pono is an agricultural company and the main source of its revenue is and will be from agriculture and its agricultural activities as discussed in detail in Section 4.7.4 of the EIS. Specifically, Section 4.7.4 of the Draft EIS states:

At full development, the Mahi Pono farm plan would result in a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops. Annual sales are expected to reach about \$155.9 million. The pastures would support a cattle herd of about 7,300 cow-and-calf animal units (au), produce over 4,300 calves per year, and generate revenues of about \$4.8 million per year. Thus, total farm sales would be about \$160.7 million per year, of which an estimated \$104.4 million (65%) would be Hawai'i sales and \$56.2 million export sales (35%).

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Based on recently built or approved solar farms, the solar farm would generate about 82,100 MW of electricity per year, with revenues of about \$8.2 million per year paid by MECO to the solar-farm operator. Combined farm and energy revenues would reach about \$168.9 million per year in direct sales (exceeding the 2006 revenues from sugar production of \$101 million, and the \$116 million average for the 2008-to-2013 period). Purchases of goods and services by farmers and the families of employees would generate indirect sales and, in turn, these suppliers would generate more indirect sales by their purchase of goods and services. The indirect sales are estimated at about \$160.7 million per year. Total direct-plus-indirect sales would be about \$329.5 million, of which about \$273.8 million would be on Maui and about \$56.2 million on O`ahu.

About \$24.9 million of consumption expenditures would be subject to the excise tax on final sales, and about \$248.2 million subject to the excise tax on intermediate sales. Rental income from leasing land to other farmers and to an energy company would be about \$1 million per year. Profits from farm operations, energy operations, and indirect sales would be about \$33 million.

Regarding meetings with the Maui County Council, A&B, after the close of its sugar operations and prior to the sale of its agricultural fields to Mahi Pono, appeared before the Council to discuss its diversified agricultural plans, at that time, for the former sugar lands. Mahi Pono has individually met with several members of the Maui County Council, but Mahi Pono has not been formally invited to provide testimony at a formal meeting of the County Council or any of its committees. Mahi Pono has also had various meetings with community groups such as Go Maui, Maui Tomorrow, Mā`alaea Community Association, Pukalani Community Association, and the Alliance of Maui Community Associations regarding the Mahi Pono farm plan and use of water from East Maui streams, and conducted farm tours with members of the community.

Mahi Pono is also working with the County of Maui Department of Water Supply (MDWS), as well as the County Corporation Counsel and Mayor's offices, to help coordinate continued deliveries of surface water to the County's Kamole-Weir Water Treatment Plant (WTP) and the Kula Agricultural Park (KAP).

Comment 4: *Throughout the line of questioning pursuant to the DEIS East Maui Water Lease, I am attaching the following 5 documents to my email in support of the line of questioning:*

1. National Weather Service Drought Information Statement from October 2019.

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2. *DEIS Section 3.1.2 Aqueduct Ownership (Pages 87 – 88) regarding no alternative scenarios for ownership of the means of delivering water out of the East Maui license areas.*

3. *DEIS Section 3.3 No Action (Pages 89-90) regarding a “Perpetual water lease” Issued in 1938 by the Territory of Hawaii.*

4. *The Nature Conservancy Statement regarding the East Maui Irrigation Company supplied 60Bn Gallons/year of clean water to end users.*

5. *Credible source of water prices in California to compare and contrast Hawaii’s \$5/MG to California’s \$373 + Delivery/ Acre foot for agriculture water.*

Response 4: Thank you for providing the resources mentioned in Comment #4 above as they helped provide context to your subsequent comments below.

Comment 5: *Here is a list of questions I kindly request complete answers to:*

What happens if/ when the farming activity associated with the attainment of this lease ceases for any length of time?

Response 5: Regarding your comment about what would happen if agricultural activities ceased for any length of time after the Water Lease is obtained, this is highly speculative to assess within the EIS, and is therefore not a reasonable alternative. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS. However, it is expected that any Water Lease issued by the State will authorize the use of water for particular purposes. As such, it is assumed that if farming activity stopped for any period of time, there would likely be a corresponding decrease in the amount of water diverted from East Maui by the EMI Aqueduct System for the same period.

We note that Chapter 3 of the EIS and the underlying studies discuss alternatives to the Proposed Action, including the alternative of "No Action." The "No Action" scenario means one where no Water Lease is issued. Chapter 3 and the underlying studies assess the anticipated impacts in East Maui, Upcountry Maui, and Central Maui, under the no Water Lease scenario. The "No Action" scenario described in the EIS assumes that Mahi Pono would continue to farm the Central Maui agricultural fields to the extent feasible, whereas the scenario you posit entails a period of leasing of water and Central Maui farming, followed by an unidentified event that

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causes Mahi Pono to stop farming. As noted above, it is expected that the Water Lease, if issued, will be issued conditioned upon specific uses of the water, and the lessee would have to comply with those requirements in order to divert the State's East Maui stream water under the Water Lease.

Relatedly, we note that impacts resulting from the diversion of a lesser amount of water than in the Proposed Action are discussed in Section 3.2.1 of the EIS and throughout Section 3.4, which provides a comparative evaluation of various alternatives, including the "No Action" alternative .

Comment 6: *Will the applicant refile the DEIS to allow more time for review of this significant document and its ultimate consequences?*

Response 6: As discussed in Response #2 above, there is no statutory mechanism that provides for time extensions of the comment period. Hence the comment period for the Draft EIS was not extended. All comments received on the Draft EIS have been responded to in the Final EIS, which will be made available for public review and BLNR decision-making on the acceptability of the Final EIS.

Comment 7: *How many local farmers/farming entities has Mahi Pono contacted to see if their very large business will affect those smaller farming entities revenues or labor pools?*

Response 7: While Mahi Pono does not keep records of the exact number of local farmers that have been contacted during its outreach efforts, it has contacted numerous farmers. These farmers include sweet potato farmers on islands of Maui and Moloka'i, onion farmers on Maui and O'ahu, papaya farmers on the island of Hawai'i, ranchers on Maui and the island of Hawai'i, and taro farmers on Maui.

These farmers have expressed tremendous comfort in the fact that Mahi Pono's stated goal – which was reiterated to these farmers during these outreach efforts – is to increase the food sustainability of the State of Hawai'i by reducing the State's reliance on imported food. Mahi Pono is not focused on competing with other local farmers, and is actively trying to avoid this scenario by supporting local farmers. One of the most significant benefits to the local farming community is the development of a Community Farm, which will provide local farmers with access to farmable land and water at a very reasonable cost. See e.g. Final EIS Section 4.7.4 describing Mahi Pono's planned lease rent to be \$150 per acre per year.

Please note that a factor in the Mahi Pono farm plan, as stated in the EIS, is to be sensitive to the existing local farming community. "Mahi Pono does not want to displace local farmers by planting competing crops or artificially accelerating the ramp-up of operations, both of which

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could have the potential to drive local farmers out of the market." See EIS Section 2.1.4. We also note that focus group sessions held as part of the Social Impact Assessment (SIA) conducted for the EIS and provided as Appendix G to the EIS and summarized in Section 4.7.2 of the EIS, included considerations of impacts to local farming. As discussed in Section 4 of the SIA, seven focus groups were convened in November 2018. Participants in these sessions included residents, farmers and ranchers, and people who are active in environment and sustainability efforts. These participants lived in Ke‘anae, Wailuānui, Huelo, Ha‘ikū, Kula, Makawao and Pukalani. The participants of those focus groups are identified in Tables 7 through 13 of Appendix G. Table 8 of the SIA identifies the ranchers and farmers that participated in the focus groups, with additional farmers being identified in Table 10. The SIA, summarized in Section 4.7.2 of the EIS, obtained input from several community members, many of whom have direct and long-term experience with the streams in East Maui. In particular, Section 5.3.2.3 of the SIA entitled "Local Farmers and Ranchers" discusses the potential social impacts of the Proposed Action on local farmers and ranchers:

The effect of the proposed water lease on Maui-based farmers, rangers and flower growers will depend on whether they can participate in future diversified agriculture in Central Maui. Thus far, there has been discussion regarding setting aside land for local farmers and eventually creating support facilities and services intended to provide means to reduce costs for individual farms. Little or no mention has been made regarding including livestock farmers in Mahi Pono's farm plan.

For Upcountry Maui farmers in the current and 262-acre expansion of Kula Agricultural Park, the effect of the proposed action will depend on how much water they can receive if the water lease is granted. There is a current allocation for the Kula Agricultural Park and the 262-acre expansion.

For East Maui farmers, the proposed water lease would continue to divert water from streams not designated for full restoration, although some are mandated to have partial restoration to support the stream habitat. When active diversion resumes, it is expected that an overall decrease in stream flow will occur in East Maui when compared to current conditions, but there will be an overall increase in stream flow compared to when sugar was fully operational in Central Maui.

Table 8 of the SIA in the Final EIS summarizes the concerns identified by farmers and ranchers who participated in the focus groups.

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Regarding your question about impacts on labor pools, the economic and fiscal impacts of the Proposed Action were also assessed in the Economic and Fiscal Impact Study report attached to the EIS as Appendix H and summarized in Section 4.7.3 of the EIS. The impacts of the Proposed Action on the agricultural economy are described in Section 4.7.4 of the EIS and Appendix I, the Agricultural and Related Economic Impacts report. This analysis is discussed in more detail below in response to your Comments #8, #9, and #10 below. It is anticipated that attracting farm workers overall should be easier than in the recent past because of the long-term adverse economic effects of COVID-19 on tourism and Maui's economy.

Comment 8: *What economic impact does Mahi Pono foresee its agriculture operations having on the local farmers growing identical or similar crops?*

Response 8: As noted in Response #7, the EIS explains that Mahi Pono's farm plan is sensitive to local farmers. Section 2.1.4 describes the Mahi Pono farm plan as follows:

Mahi Pono's farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation. All of these things must be considered when developing an evolving and feasible diversified agricultural plan for Central Maui.

Another factor in developing the farm plan is to be sensitive to the existing local farming community. Mahi Pono does not want to displace local farmers by planting competing crops or artificially accelerating the ramp-up of operations, both of which could have the potential to drive local farmers out of the market. Mahi Pono's goals for its diversified farm plan will be guided by its core principles of using reasonable and environmentally responsible "best management practices", planting non-GMO crops, and growing food for local consumption.

Agricultural and related economic impacts under the Proposed Action are discussed in Section 4.7.4 of the EIS. Specifically, Section 4.7.4 of the Draft EIS states:

The farm plan will evolve over time based on a number of factors, including the available supply of surface water, experience which will be gained on crops that grow well in Central Maui, crops that are profitable, the size of the market for profitable crops, etc. Nevertheless, current estimations are that 80% of the Central Maui fields will be used for orchards, which reflect a long-term commitment to agriculture. About 800 acres would be used for community farms

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of 1, 5 and 10 acres. The solar farm is assumed to use approximately 250 acres. Mahi Pono plans on leasing approximately 2,050 acres to other farmers.

However, please note that the above has been updated in the Final EIS to explain that the 2,050 acres leased to other farmers will include 800 acres for Community Farms, 500 acres for energy crops and 750 for other crops, as shown in page 4-300 of the Final EIS. Moreover, as noted in the EIS and discussed in more detail in Appendix I (Agricultural and Related Economic Impacts report) the Mahi Pono farm plan proposes low rents for its Community Farm tenants:

Subject to the terms of the Water Lease, Mahi Pono plans to offer favorable lease terms for community farms, including anticipated rents of \$150 per acre per year. This rate is low compared to annual per-acre rents of about \$350 for large farm parcels on O‘ahu, over \$500 for most State farmland on O‘ahu, and over \$160 for most farmland in State Ag Parks on the Neighbor Islands. Other farm tenants will be charged market rents.

Comment 9: *What impact will the “Community Farms” (that Mahi Pono is building and populating with farmers) that it will be delivering water to have on the existing Kula Agriculture Park?*

Response 9: As discussed in Section 2.1.3.2 of the EIS, water demands at the KAP are served by the County using non-potable water from diversions of the same streams that serve the Kamole-Weir WTP through the Wailoa Ditch. Section 2.1.3.2 of the Draft EIS states:

As of late 2015, the Maui County Office of Economic Development calculated that the current use for the KAP is approximately 548,191 gpd of which 80-90 percent of delivered water is from surface water sources with the remaining portion from basal aquifer wells.

However, please note that the above has been supplemented in the Final EIS as shown on pages 2-20 to 2-21 to include a discussion regarding the 262-acre KAP expansion and the water allocation from the EMI Aqueduct System (which expansion and allocation was identified in the Draft EIS).

As discussed in Section 4.7.4 of the EIS, should the Water Lease be issued as proposed, it is anticipated that about 1,510 acres of farmland in Upcountry Maui would be irrigated with water from the EMI Aqueduct System, including the KAP and the KAP expansion area, and many small Upcountry farms. Existing Upcountry Maui farming is assumed to continue. Other than additional farming at the KAP expansion, no significant increase of commercial agriculture is expected to occur in Upcountry Maui, primarily because Central Maui, should the proposed Water Lease be issued offers an abundant supply of high-quality farmland, higher solar radiation, flatter terrain, a location closer to markets and shipping terminals, and potentially far better

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access to water at a lower water rate. However, it is also anticipated that some residents of Upcountry Maui may engage in limited semi-commercial agriculture because they are attracted to the farming lifestyle, and farming would lower their property taxes. These semi-commercial farmers may sell some of their crops to help cover operating costs.

Comment 10: *What impact will Mahi Pono's agriculture operations have on the availability of farmer laborers on Maui?*

Response 10: At full operations of the Mahi Pono farm plan, currently estimated to occur around 2030, an estimated 790 farming and crop-processing jobs will be provided in Central Maui (direct jobs) (about 160 more jobs than provided by HC&S sugar operations in 2006). As explained in Section 4.7.4:

The increase in employment would be gradual, with most jobs filled by former sugarcane workers, skilled workers from Maui and other islands, recent graduates of agricultural-schools and colleges, and unskilled workers who would receive on-the-job training.

Approximately an additional 227 indirect jobs on Maui will be generated by the purchase of goods and services, for a total exceeding 1,000 new jobs on Maui. Hiring workers will be spread out over a number of years as fields are planted, orchards mature, processing facilities are built, etc. Assuming 10 years to reach full operations, direct employment on Maui will increase by an average of about 80 jobs per year, while total direct and indirect jobs will increase by an average of about 100 jobs per year. The latter figure is less than 8% of the 1,270 annual job increase projected for the years 2020 to 2030 by the State for the County of Maui (DBEDT, "Population and Economic Projections for the State of Hawai'i to 2045, June 2018).

first 18 months of existence Mahi Pono had hired over 200 workers, all of whom were living on Maui when hired. They were attracted by the type of work, wages and benefits.

Based on past hiring, nearly all future employees are expected to come from Maui. Also, at least in the near-term, attracting workers should be easier than in the recent past because of the long-term adverse economic effects of COVID-19 on tourism and Maui's economy. It may take years to rebuild the economy, and the Mahi Pono farm plan will contribute significantly to this rebuilding.

Comment 11: *How many farm workers will come from Maui, and how many off island workers will our communities be expected to absorb?*

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Response 11: Please see Response #10. Since most, if not all, farm workers are expected to come from Maui, few off island workers are expected to be absorbed in Maui communities.

Comment 12: *Where will temporary laborers come from?*

Response 12: Mahi Pono does not plan to hire any temporary laborers. As described in Response #10 above, at full operations of the Mahi Pono farm plan, currently estimated to occur around 2030, an estimated 790 farming and crop-processing jobs will be provided in Central Maui (direct jobs) (about 160 more jobs than provided by HC&S sugar operations in 2006). Based on past hiring, nearly all future employees are expected to come from Maui. In its first 18 months of existence Mahi Pono had hired over 200 workers, all of whom were living on Maui when hired. They were attracted by the type of work, wages and benefits.

Comment 13: *How many homes will be needed to house the Mahi Pono Work force in the next 5 years?*

Response 13: As discussed more fully in Responses #10 - 12, since most, if not all, farm workers are expected to come from Maui, few homes will be required for workers new to the island. In any case, Mahi Pono will pay wages and provide benefits sufficient to attract and retain workers.

Comment 14: *What happens with the water lease if/when the farming activity associated with the attainment of this lease ceases for over one year?*

Response 14: The scenario you describe in your Comment #14 above is not within the scope of the EIS. The scope of the EIS is described in Response #5 above. Moreover, your Comment #14 is substantially the same as your Comment # 5, and we refer you to Response #5. It is expected that any Water Lease issued by the State will authorize the use of water for particular purposes, and the lessee would have to comply with those requirements in order to retain its rights under the Water Lease. As such, it is assumed that if farming activity stopped for any period of time, there would likely be a corresponding decrease in the amount of water diverted from East Maui by the EMI Aqueduct System for the same period.

Comment 15: *What happens with the water lease if/when the farming activity associated with the attainment of this lease ceases for more than 3 years?*

Response 15: Please see Responses #5 and #14 above.

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Comment 16: *Why should the state of Hawaii grant a 30-year lease when Maui has been experiencing prolonged D3 (Extreme) drought levels (NWS Drought Document Attached), and prolonged D2 (Severe) drought levels?*

Response 16: The surface water that is being diverted under the Proposed Action will come from the License Area in East Maui, as well as from private lands owned by EMI. As discussed in Response #17 below, East Maui is expected to see an increase in rainfall in the future due to climate change. Moreover, as discussed in Section 4.3.1 of the EIS, East Maui is one of the wettest regions in the State receiving over 200 inches of rainfall per year. Specifically, Section 4.3.1 states:

The License Area is located along Maui's Ko'olau coastline. Mountains obstruct trade-wind air flow and create wetter climates on north and northeast facing mountain slopes. Persistent trade winds and orographic lifting of moist air result in recurrent clouds and frequent rainfall on windward slopes. When trade winds are present, the vertical development of clouds is restricted by the trade-wind inversion layer. The altitude of the inversion, however, varies over time and space and is affected by thermal circulation patterns, such as land and sea breezes. Most of Maui is usually immersed in the moist air layer below the inversion. On the windward slopes of Haleakalā, which includes the License Area, mean rainfall exceeds 200 inches per year. In the past, this region has experienced as much as 28 inches of rain in 24 hours. Monthly average rainfall is generally evenly distributed, and rainfall levels range from as much as 300 inches in the lands above Nāhiku, to a low of 75 inches found in regions above Ke'anae. On average, USGS data indicates rainfall ranges from 101-454 inches per year, making this region one of the wettest places in the State of Hawai'i.

Section 4.3.1 of the Final EIS has been expanded to include information from the archeological literature review and field inspection (LRFI) report (Appendix E), the Cultural Impact Assessment (CIA) report (Appendix F), and the Terrestrial Flora and Fauna Technical Report (Appendix C) prepared for this EIS as shown on pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

We note that the materials you provide identify serious brushfires in certain areas of Maui. As noted in the EIS, both under current conditions and under the proposed Water Lease, water use does and will continue to include water used for reservoirs and fire protection.

Note that Section 1.1 of the EIS describes the purpose and need for the Proposed Action. In regards to drought, drought like conditions are anticipated to occur within Upcountry Maui as

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well as Central Maui as discussed in Section 4.3.1 of the EIS. These regions are currently reliant on water transported from East Maui via the EMI Aqueduct System and are expected to continue to be reliant in the future, and water delivery is expected to continue should the Water Lease be issued as proposed. Moreover, the water delivered to the MDWS through Wailoa Ditch is an important back-up source for the Lower Kula and Upper Kula Systems during dry periods as the Wailoa Ditch is the more reliable of the three Upcountry surface water sources. Water is pumped uphill from the Kamole-Weir WTP to the Upper and Lower Kula systems during dry periods. Therefore, these systems also depend on the EMI Aqueduct System in crucial, drought times. Please note that Section 2.1.3.1 of the Final EIS has been supplemented to include this information as shown on pages 2-19 to 2-20. Hence, under the Proposed Action, the Water Lease would enable the EMI Aqueduct System to continue to convey water to Upcountry Maui as well as to the agricultural fields in Central Maui to implement Mahi Pono's farm plan.

Furthermore, it is also understood that notwithstanding any changes to stream flows due to climate change, the use of the water under the Water Lease will have to adhere to the Interim Instream Flow Standards (IIFS) set forth in the Commission on Water Resources Management Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O).

Comment 17: *Are climate change models predicting adequate levels of rainfall to sustain the operations as described in this 2700-page EIS?*

Response 17: Regarding your comment about the climate change models, the EIS includes the most recent information regarding climate change within its analysis. As discussed in Section 4.3.1 of the Draft EIS:

Regular trade winds are key in driving the Hawai'i's hydrological cycle, generating rainfall which helps maintain Maui's water supply. However, a recent study showed that Hawai'i's trade winds have decreased in frequency by approximately 30% over the past 37 years, from 291 days per year in 1973, to 210 days per year in 2009 (Garza et. al, 2012). The decrease in the trade winds could have serious implications for the Hawaiian Islands, including adversely impacting local agriculture, native ecosystems and endangered species, and the State's limited freshwater supply.

Overall, the State of Hawai'i is experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude,

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and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014)...

Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. Such rainfall patterns increase the amount of stormwater runoff flowing through the region, including through the streams within the License Area that reach the shoreline. The expected climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. (SE & MRC, 2019).

Moreover, a 2019 USGS publication titled “*Estimated Groundwater Recharge from a Water-Budget Model Incorporating Selected Climate Projections, Island of Maui, Hawai‘i*” discussed in Section 4.2.2 and Section 4.3.1 of the Final EIS identifies certain aquifer sectors and aquifer systems that will experience either increases or decreases due to climate projections. In the scenarios presented in the USGS report, the aquifer systems in the Ko‘olau Aquifer Sector are projected to see some of the largest increases in recharge, whereas aquifer systems in the Central Aquifer Sector are projected to see decreases in recharge due to changes in rainfall patterns from future climate change trends. However, please note that under the Proposed Action, surface water is diverted from the East Maui License Area (which lies largely over the Ke‘anae, Waikamoi and Honopou aquifers in the Ko‘olau Aquifer Sector (See EIS Figure 4-17)), to the Central Maui agricultural fields, which largely lie over the Pā‘ia Aquifer in the Central Aquifer Sector (See EIS Figure 4-18).

As detailed in Section 4.2.2 of the EIS, the groundwater pumpage within the Ko‘olau Aquifer Sector is far below the Sustainable Yield (SY). This section of the EIS also addresses the anticipated impacts to the Central Aquifer Sector from the conveyance of East Maui surface water to Central Maui for irrigation purposes. Section 4.2.2 of the EIS has been updated to reflect the USGS report, as shown on page 4-71 for East Maui and page 4-76 for Central Maui.

Regarding the "operations" mentioned in your comment, we assume you are referring to the Mahi Pono farm plan operations. Therefore, in addition to the information above, we note that

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Mahi Pono has several water conservation strategies planned, as more fully discussed in Response # 18 below.

Comment 18: *What is the applicant doing with regards to considering the planting and use of water conservation practices?*

Response 18: Your Comment #18 is unclear. We assume your comment is directed toward Mahi Pono's diversified agricultural activities in the Central Maui agricultural fields, as that is the only location identified for planting.

Regarding water conservation practices, Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e. the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown on page 2-25.

Mahi Pono has also implemented several water saving strategies for the Central Maui agricultural fields and continues to evaluate additional methods. Mahi Pono's water saving strategies include the following:

- Planting windbreaks in the fields.
- Incorporating significant uses of weed mat along plant lines, which will reduce evapotranspiration and erosion.
- Mowing rather than plowing inter-rows to preserve organic matter and keep cover to prevent soil erosion.
- Operating within the terms of a Conservation Plan from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), which includes swales and diversions for erosion protection,
- Practicing rotational grazing of livestock,
- Planting permanent tree crops that will develop canopies that will assist with soil moisture retention and reduce evapotranspiration.

Mahi Pono plans to plant various crops as discussed in Section 2.1.4 of the EIS. Planting takes into account areas that can be irrigated with the East Maui surface water as well as areas that can be irrigated with brackish water from Mahi Pono's groundwater wells. As explained in EIS

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Section 4.7.4, most of the water for irrigating crops must come from surface water. Upper fields can be irrigated only with surface water. Lower fields can be irrigated with a mix of surface water and brackish groundwater. Because of salinity, the use of brackish water on the lower fields is limited to about 30% of the water applied. Combining the upper and lower fields, the overall water split across all 30,000 acres would be approximately 80% surface water and 20% brackish groundwater water.

The total surface water available for use after system losses within the Central Maui Field Irrigation System is estimated to be approximately 65.88 million gallons a day (mgd). Surface water can be supplemented by a brackish groundwater amount equal to 20 percent of surface water. Taking into account the CWRM D&O's impact on the amount of surface water, it is estimated that there could be up to 16.47 mgd of brackish groundwater used after system losses in the Central Maui agricultural fields. As such, Table 2-1 of the Draft EIS, updated as Table 2-2 of the Final EIS, provides the estimated water usage (both surface and groundwater) at full operations for the various farming activities planned. See pages 2-28 to 2-29 of the Final EIS.

Comment 19: *What is the average demand per acre for crop use during the term of this lease?*

The average demand of water in gallons per acre per day for each type of crop is discussed in Table 2-1 of the Draft EIS, which is now Table 2-2 of the Final EIS, entitled "Mahi Pono Farm Plan" as discussed in Response #18 above and shown on page 2-29 (the table has been slightly revised to address rounding errors).

Comment 20: *What amounts of water will EMI/A&B/Mahi Pono Et. Al. allocate to riparian areas and domestic areas should the lease be in effect, and prolonged extreme drought does not supply enough water for the stated Mahi Pono farming operations:*

- a. What happens to the domestic users supply, how much will be available?*
- b. How much water will be available to the agriculture users that are dependent upon county waters?*

Response 20: Use of the East Maui stream water will be subject to compliance with the CWRM D&O. Specifically discussed in Section 1.3.4 of the Draft EIS:

The June 20, 2018 CWRM D&O establishes a quantity of water that must remain in each stream at specified locations subject to the IIFS Petitions. The CWRM D&O does not specifically authorize or allocate amounts of water for offstream uses. The CWRM evaluated each of the streams under the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration potential for fish and other stream animals, recreational

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opportunities, and scenic values. Then the streams were looked at in an integrative approach with consideration for the overall ecological ramifications of the decision. The CWRM also considered the economic ramifications of its decision on offstream uses, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture.

Theoretical models of un-diverted total and base flows were used in the majority of the streams to set the IIFS. The IIFS is a numeric flow rate, measured in cubic feet per second (cfs) that must remain in the stream at a certain location. The CWRM used a median base flow (BFQ₅₀) to make their decision, which is an amount of stream flow that can be expected to be found in the stream at least 50% of the time. Base flow is a smaller component of the stream's total flow. Total flow includes water input from normal rainfall and storm events. Depending on the location, the base flow standard can vary, therefore it is typically measured at a lower elevation downstream that is more accessible.

To set the IIFS, the CWRM grouped the streams into four broad categories with different objectives and management strategies: (i) conveyance of water to kalo growing areas for community use; (ii) water for streams with high biological value, (iii) water for streams that have barriers to biological or ecological improvements, and (iv) noninstream use of water for municipal and agricultural uses. (See Figure 1-3). The CWRM D&O significantly reduces the amount of water that can be diverted for offstream uses relative to the capacity and use of the EMI Aqueduct System when sugar was being cultivated. Ten streams were ordered to have no diversions at all (one of which, Waiokamilo, had stream flow fully restored in 2007) (referred to as "Fully Restored Streams" in Figure 1-3), 5 were required to return 64% of BFQ₅₀ in the stream at all times (referred to as "Habitat Streams" in Figure 1-3), and 7 were required to have 20% of BFQ₅₀ in the stream at all times (referred to as "Connectivity Streams" in Figure 1-3).

Hence the CWRM D&O restored streamflow for many of the riparian areas in East Maui, and under the Proposed Action compliance with the IIFS under the CWRM D&O is required. As noted in Response #16, it is also understood that notwithstanding any natural changes to stream flows, the use of water under Water Lease will have to adhere to the IIFS under the CWRM D&O.

Regarding your comment about effects on domestic users and agricultural users on the County system should there be a prolonged extreme drought, this is a hypothetical situation and hard to assess. It is unknown how much less water you are envisioning there will be. However, the

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current agreement that provides the MDWS access to water from the EMI Aqueduct System and water at Nāhiku contains provisions for the parties to cooperate during times of drought, and for the MDWS to impose use restrictions on its customers. It is envisioned should a Water Lease be successfully secured as proposed in the EIS, that a new water delivery agreement with MDWS would be entered into and that these types of drought-sharing provisions and terms would be addressed. The continuation of surface water supplies to the Upcountry Maui Water System are contingent upon the issuance of the proposed Water Lease.

Comment 21: *With the value of commercial agriculture water in California being approximately \$1140 per Million Gallons, why should the state of Hawaii sell it at \$5/ Million?*

Response 21: The source of the California water rate number that you cite is unclear. However, our understanding is that water rates vary widely throughout California depending upon the source of the water, method of delivery (i.e., at the source vs. delivered to the farm), capital infrastructure, drought conditions, and other factors. There is no single rate for water in California. Moreover, conditions in California vary greatly from those in Maui, therefore it is difficult to make any meaningful comparisons between California rates and Maui water rates. In the case of the Proposed Action and the rate projected in the EIS, the water rate paid to the State is for raw water, available at the source. This figure does not take into account the added cost of operations and maintenance associated with the Water Lease lessee's use of the EMI Aqueduct System, but the EMI Aqueduct System is needed to collect and deliver the water to the end user(s) under the Proposed Action. The comparable scenario in California would be to make water available at the river or stream, and make it the farmers' responsibility to get the water from the river or stream to their farms.

Moreover, as discussed in Section 4.7.3.1.d of the Draft EIS, the rental amount due under the Water Lease will be based on an appraisal conducted prior to issuance of the Water Lease as required under HRS Chapter 171. Please note that Section 4.7.3.1.d of the Final EIS has been updated to take into account the most recent revocable permits approved by the DLNR in November 2020 as shown on pages 4-277 and 4-283.

Comment 22: *In times of drought, what price should the state of Hawaii charge for its water? California Tripled its prices for water in the 2014-2015 drought season. Can Mahi Ponos business plans bear water price spikes due to drought conditions? If so, for how long?*

Response 22: As discussed in Response #21 above, the rental amount due under the Water Lease will be based on an appraisal conducted prior to the issuance of the Water Lease, which is within the purview of the BLNR as required under HRS Chapter 171.

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Comment 23: *Here is a California water price update (Attached):*

<https://journalofwater.com/jow/improved-water-supplies-lead-to-drop-in-agricultural-water-prices/> 1 acre foot has 326,000 gallons of water .2018 California Central Valley water prices were \$373.16 / Acre foot which equals about \$1.14/ KGal. Interestingly, the California water user also pays an operations and maintenance fee of \$76.84/A.F. This comes out to 24 Cents/KGal in maintenance fees.

*In California the delivery cost of 1MGal is \$240 or \$373/Acre Foot . This means that at California rates plus delivery, 1 MGal of agriculture water is costing \$1,380, which is 276 times the price set by Hawaii's BLNR. This takes this line of questioning to the 2700-page DEIS Document Section 3.1.2 (Attached): Aqueduct Ownership. **Please explain your position on other entities bidding on this lease, and paying the State of Hawaii a fair market price?***

Response 23: As discussed in Response #21 above, our understanding is that there are a variety of water rates changed in California. For example, our reviewed identified that the Central California Irrigation District charges \$13 per acre-foot to \$95 per acre-foot (\$0.04 per thousand gallons to \$0.292 per thousand gallons) for water delivered to farms, depending on the volume used and season (Central California Irrigation District, February 25, 2020). Higher rates are also charged when water supplies are low. In the case of the Proposed Action and the rate projected in the EIS, the water rate paid to the State was for raw water, available at the source. This figure does not take into account the added cost of operations and maintenance associated with the Water Lease lessee's use of the EMI Aqueduct System, but the EMI Aqueduct System is needed to collect and deliver the water to the end user(s) under the Proposed Action. The comparable scenario in California would be to make water available at the river or stream, and make it the farmers' responsibility to get the water from the river or stream to their farms.

As discussed in Section 4.7.3.1.d of the Draft EIS, the rental amount due under the Water Lease will be based on an appraisal conducted prior to issuance of the Water Lease.

In the interim, the amount that the State has charged EMI/A&B for water at the source (for 2021, approximately \$0.019 per thousand gallons) under the revocable permits appears comparable to the rates charged by the Central California Irrigation District.

Your reference to Section 3.1.2 of the Draft EIS, which discusses potential public ownership of the EMI Aqueduct System, is unclear. Nevertheless, we note that section has been updated in the Final EIS to address the report prepared by the County of Maui Board of Water Supply (BWS), which formed a Temporary Investigative Group (TIG) to explore options for ensuring

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public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System. The TIG prepared a TIG Report, that includes its own valuation of the EMI Aqueduct System, which was not based on an appraisal, and recommends that the County take immediate steps to secure ownership and control of the EMI Aqueduct System. The TIG Report was made public on October 16, 2019, after the publication of the Draft EIS. Hence, Section 3.1.2 has been updated accordingly in the Final EIS as shown on pages 3-19 to 3-20.

Regarding your question about the Applicant's position on other entities bidding for the proposed Water Lease, the EIS was prepared to support the application for the issuance of a long-term Water Lease for the purpose of developing, diverting, transporting and use of the State's East Maui waters through the EMI Aqueduct System for the purpose described in the EIS. The EIS also contemplates the environmental effects of variations on the Proposed Action, including scenarios where the amount of water permitted for the Water Lease is insufficient to supply Central Maui and Upcountry Maui. Thus, the EIS analyzes proposed uses of the water, but is not necessarily tied to a specific applicant (although Section 1.3.3 of the Draft EIS explains how A&B, on May 14, 2001, requested that the State offer at public auction a long-term water lease under HRS § 171-58 for the, "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System). Hence, any party who intends to use the water in a manner consistent with the EIS analysis could, presumably, use the EIS to support a bid on the Water Lease at public auction. As discussed elsewhere in this letter and in the EIS, an appraisal to determine the fair market value of the Water Lease will be conducted prior to issuance of the Water Lease. Our expectation is that the DLNR, on behalf of the BLNR, will commission, or approve the commissioning of, the appraisal.

Comment 24: *Explain Section 3.3 (Attached) and the legal standing that A&B had under the 1938 lease in "Perpetuity" as relates to the fact that the territory is now non-existent? Does that contract still have any legal standing in the State of Hawaii under our Constitution and its Public Trust Doctrine? Please provide a copy of that 1938 perpetual East Maui water lease document for evidence of the agreement.*

Response 24: The EMI Aqueduct System is owned and operated by the East Maui Irrigation Company, LLC. Please note that the 1938 Agreement between A&B / EMI (referred to as "the Company") and the Territory of Hawai'i, which has been added to the Final EIS as Appendix R, acknowledges EMI's ownership of the EMI Aqueduct System. Pursuant to the 1938 Agreement, the Territory of Hawai'i (now the State) granted perpetual easements to EMI for those portions of the EMI Aqueduct System located on State lands. See EIS Section 3.3, which has been updated in the Final EIS to further discuss rights the EMI Aqueduct System has to a limited

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amount of water collection irrespective of any Water Lease. See pages 3-24 to 3-25 of the Final EIS.

As described in Section 2.1.2 of the Draft EIS, the EMI Aqueduct System spans both State-owned and EMI-owned lands and is an integrated system. Relative to the proposed Water Lease, the Collection Area for the EMI Aqueduct System covers approximately 50,000 acres, of which 33,000 acres are owned by the State and 17,000 acres are privately owned. See Draft EIS Figure 1-1 (EMI Aqueduct System Collection Area). The EMI Aqueduct System also collections water from purely private lands located to the west of the Collection Area, as noted in Figure 1-1. As mentioned above, under the 1938 Agreement, the State and EMI each granted to the other “perpetual” easements to those portions of the EMI Aqueduct System located on the other’s land. The duration of these “perpetual” easements was stipulated to last until the termination of the 1938 Agreement. The 1938 Agreement is still in place and valid. The State may, but is not obligated to, terminate the 1938 Agreement only if the licenses are offered at auction but EMI fails to bid. EMI may, but is not obligated to, terminate the 1938 Agreement if the State fails to offer the licenses at auction. Thus, if no license is offered at auction, the 1938 Agreement provides that EMI may still collect water derived from the EMI owned portions of the Collection Area and, utilizing the easement granted to it in the 1938 Agreement, transport it across the portions of the EMI Aqueduct System that transverse State lands.

The 1938 Agreement defines the “Territory” to include its “successors” (i.e., the State). EMI has not failed to bid at any auction of licenses, so the condition precedent for the State to have the right to terminate has not occurred. While the State has not yet offered the licenses at auction, EMI has not exercised its right to terminate and is instead a proponent of the Proposed Action which would lead to the licenses being offered at auction for the purpose of the continued integrated operation of the EMI Aqueduct System. Neither party has terminated the 1938 Agreement.

We note that CWRM, at p. iii of the Executive Summary of the CWRM D&O, characterized the EMI Aqueduct System as “a valuable asset that delivers offstream public trust benefits such as drinking water, as well as irrigation water for reasonable and beneficial uses.” CWRM further stated, at p. vi: “The Commission’s intent in this decision is to ensure that a sufficient amount of offstream water is available to support the cultivation of diversified agricultural crops on the lands designated as IAL [Important Agricultural Lands] in central Maui.” The continued existence of the 1938 Agreement, with its mutual grant of easements, is necessary in order for the uses of East Maui stream water envisioned by CWRM to be possible. As such, the continued recognition of the 1938 Agreement would appear to be consistent with the Public Trust Doctrine as it has been interpreted by CWRM. Please also refer to Response #38 below which discusses

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the BLNR's responsibility with respect to any public trust obligations related to the Proposed Action.

Comment 25: *Please explain the way that water reaches the 36,000 “Upcountry” Users through the Kahakapao, and Pi’iholo reservoirs.*

Response 25: As discussed in Section 2.1.3.1 of the Draft EIS, the water delivered to the Olinda/Upper Kula WTP is stored in two reservoirs: the 30 mg Waikamoi reservoir and the 100 mg Kahakapao reservoir. The source of water for the Olinda Water WTP is the Upper Waikamoi (Kula) Flume surface water diversion system. However, please note that this region, where the Upper Waikamoi (Kula) Flume collects water, is not part of the License Area. The water supplied to the Upper Waikamoi (Kula) Flume is not from the License Area streams and is not supplied through the EMI Aqueduct System.

Regarding the Pi’iholo reservoir, the source of this water is from the Lower Waikamoi (Kula) Flume surface water diversion system, as discussed in Section 2.1.3.1 of the EIS. The Lower Waikamoi (Kula) Flume diverts water from various streams in the Ha’ikū Uka Watershed (Waikamoi, Puohokamoa, Ha’ipua’ena, and Honomanū), owned by EMI, into to the 50 g Pi’iholo reservoir, which then feeds the the Pi’iholo Water Treatment Facility (Pi’iholo WTF). The Pi’iholo WTP then supplies water to the Lower Kula System which serves the Lower Kula community. As with the Upper Waikamoi (Kula) Flume, the Lower Waikamoi (Kula) Flume is not part of the License Area and the water supplied to the Lower Waikamoi (Kula) Flume is not from the License Area streams and is not supplied through the EMI Aqueduct System. However, the MDWS’ access to water for the Upper Waikamoi (Kula) and Lower Waikamoi (Kula) Flumes is dependent are contingent upon the issuance of the Water Lease.

Regarding your comment about 36,000 Upcountry users, we assume you are referring to statements in the EIS that the Upcountry Maui Water System, which is comprised of three separate subsystems (the Upper Kula System, the Lower Kula System, and the Makawao System), is estimated to serve over 35,000 people, and the overall service area includes several businesses, churches, Kamehameha Schools, Hawaiian Homelands and government facilities. The Kamole-Weir WTP, which receives water through the EMI Aqueduct System, supplies water to the Makawao System. The Upcountry Maui Water System is described in Section 2.1.3.1 of the EIS. Please note, following publication of the Draft EIS, we received additional information from the MDWS which resulted in edits to Section 2.1.3.1 that provide clarification to the Upcountry Maui Water System as shown in pages 2-13 to 2-20 of the Final EIS. Also please note that Figure 2-4 has been added to Section 2.1.3.1 of the Final EIS to depict the three Upcountry Maui Water System’s subsystems service areas. See page 2-15 of the Final EIS.

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Comment 26: *Please explain exactly why the Kahakapao reservoir was built, and what if any restrictions that there are for domestic water use.*

Response 26: Please note that this is outside the scope of the EIS. Please refer to Response #5 above regarding the scope of the EIS. However, it can be assumed that due to the low treatment capacity of the Olinda / Upper Kula WTP, the Kahakapao reservoir was built by MDWS to store water diverted during high flows to better service the communities of Upper Kula. We are unaware of any restrictions on domestic water use as that is within the purview of MDWS.

Comment 27: *Please explain why EMI is permitted to divert stream flow on its private property without a lease, license, or a permit, Vs. on State owned lands where it does need a permit or a lease to divert water into the delivery system.*

Response 27: As discussed in Response #24 above, the 1938 Agreement (copy appended to the EIS as Appendix R) clearly recognized that EMI did not need a license from the Territory (now the State as the Territory's successor) to divert and convey in the EMI Aqueduct System water derived from privately owned watershed lands. All such stream diversions are registered with the CWRM.

Comment 28: *Please explain if Upcountry Maui's demand for water could be met with source from Waikamoi, rather than pumping from Kamole Weir during drought time. The Nature Conservancy claims on their website that 60 Bn Gallons of clean water flows out of EMI's delivery systems annually, which is 164,383,561 gallons/ day.*

Response 28: History has proven that the Upper and Lower Waikamoi (Kula) Flume surface water diversion systems need to be supplemented with water delivered from the Kamole-Weir WTP, which is supplied with water from the EMI Aqueduct System during periods of drought. As discussed in Section 2.1.3.1 of the EIS, average daily use by the MDWS at Kamole-Weir WTP is 7.1 mgd out the 13 mgd total for all surface water sources in the Upcountry Maui Water System. Hence, the water supplied from the EMI Aqueduct System directly accounts for over half of the total surface water used in the Upcountry Maui Water System. This is addressed in more detail in Response #20 above.

Moreover, MDWS has a backlog of requests for new water meters in the Upcountry Maui Water System area due to the lack of adequate water availability as described Section 2.1.3.1 of the EIS. Hence, the water received from the EMI Aqueduct System is critical to continue a reliable and adequate source of water for MDWS to supply to Upcountry Maui.

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Regarding your comment about claims made by the Nature Conservancy on their website, we would like to clarify that the Nature Conservancy website claims the 100,000-acre East Maui Watershed provides 60 billion gallons of clean water annually to Maui's residents, businesses, and agricultural community, not EMI's delivery systems. As stated in Section 1.3.1 of the Draft EIS:

The EMI Aqueduct System collects surface stream water from approximately 50,000 acres of land (Collection Area), of which approximately 33,000 acres are owned by the State of Hawai'i (which includes lands within Nāhiku, Ke'anae, Honomanū, and Huelo) (License Area), and the remaining approximately 17,000 acres which are privately owned (See Figure 1-1).

The 100,000 acres of the East Maui Watershed spans well beyond the Collection Area of the EMI Aqueduct System.

Comment 29: *At California rates, the State of Hawaii could profit by \$82M / year if it took over the system. Why is this not a viable alternative to a foreign pension fund profiting from our public trust resources?*

Response 29: We are unclear as to how you calculated that the State of Hawai'i could profit by \$82M/year if it took over the EMI Aqueduct System. We acknowledge the materials enclosed with your comment letter include a write up explaining that "growers" in the California Central Valley paid an average of \$373.16 per acre foot for water and \$76.84 per acre foot in operation and maintenance charges. For context, we note that the cost of water at the source, such as under the proposed Water Lease, is much less than the cost of delivered water. However, we cannot comment further because we do not understand the basis for your assertion of \$82M/year.

Moreover, as discussed in Section 3.1.2 of the EIS, forced acquisition of the EMI Aqueduct System is projected to be prohibitively expensive, as the market value of the EMI Aqueduct System is expected to be significant. Costs incurred for condemning the EMI Aqueduct System would result in substantial costs to the public. Moreover, a change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action. As previously noted in Response #23, Section 3.1.2 of the Final EIS has been updated to acknowledge the BWS TIG that was made available after the publication of the Draft EIS, as shown on pages 3-19 to 3-20 of the Final EIS. As discussed in both the Draft EIS and the Final EIS, this alternative continues to appear speculative and not consistent with the objectives of the Proposed Action.

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In response to your comment about a “foreign pension fund” we note that under the Proposed Action, Mahi Pono will introduce new agricultural activity to the State of Hawai‘i, which will benefit the State by increasing food production, employment, payroll, profits for farm tenants and companies supplying goods and services, and tax revenues to the State and County of Maui. While profits from Mahi Pono’s farming activities, when they exist, will be distributed to its investors, most of the economic benefits will remain in Hawai‘i. Please note that farming activity typically requires significant upfront investment, with much later returns. In this case, that significant capital investment is being provided by Mahi Pono’s investors.

Comment 30: *If A&B sold 50% of the EMI to Mahi Pono, what would it take for it to consider selling its remaining 50% to a local water utility to ensure that Hawaii’s water resources are well cared for.*

Response 30: This is not within the scope of the EIS. Please refer to Response #5 above regarding the scope of the EIS. Moreover, any such sale is entirely speculative. The EIS does discuss an alternative ownership of the EMI Aqueduct System in Section 3.1.2, as discussed in Response #29 above and as shown on pages 3-19 to 3-20 of the Final EIS. Moreover, it is expected that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will take into consideration all appropriate information consistent with the Public Trust Doctrine. See pages 1-25 to 1-27 of the Final EIS, which provides a discussion regarding the Public Trust Doctrine as it relates to the Proposed Action, which has been added as Section 1.5 of the Final EIS.

Comment 31: *Will EMI/A&B/Mahi Pono consider placing housing in the watershed areas so that consistent and regular maintenance of roads, ditches, controls and aqueducts can be most efficient?*

Response 31: We assume that by "the watershed area" you are referring to the East Maui License Area. It would not be feasible to locate housing in the watershed areas for a number of reasons. First, building homes and providing access, electricity, potable water, waste disposal, etc. is not included as part of the Proposed Action, which is described in Response #5 above and Section 2.1 of the EIS. Second, the License Area is within the State Conservation District (See Draft EIS Figure 5-1). Obtaining necessary approvals from the State and County may prove difficult. As discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System.

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Comment 32: *Explain any plans to develop more water resources from East Maui's watersheds.*

Response 32: Your Comment #32 is unclear as we are unsure of where specifically you mean regarding "East Maui's watersheds." Moreover, we are unsure if you mean by the Applicant or by other entities. The Applicant currently has no plans to develop more water resources within the East Maui watershed, either within or outside of the License Area. Moreover, we are unaware of any other entities planning to develop more water resources within East Maui watersheds.

However, Section 3.1.1 of the EIS explores the potential for developing water resources to replace or supplement stream diversion water as an alternative, but that alternative was determined to be infeasible and also determined to have more potential for adverse environmental impacts than the Proposed Action.

Moreover, with regard to the MDWS, by letter dated July 24, 2020 and provided as Appendix P to the Final EIS, MDWS confirmed that it has "*no current plans or anticipated future expansion or improvement of the system within the EIS Areas at this time.*"

Comment 33: *Please explain how the ditches will be maintained, especially with regards to the use of pesticides for weed control.*

Response 33: As discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7, under the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System.

Moreover, EMI has established a number of standard operating procedures to address the clean-up of trash and debris within the License Area. Besides recognizing unnecessary debris in the field during routine maintenance tasks, EMI has conducted specific identification and removal operations of debris that has been observed from previous field work. EMI also has in place a practice of removing any equipment and excess materials it brings into the License Area to perform work on the EMI Aqueduct System as soon as the job(s) is completed.

Regarding your comment about pesticide use, as discussed in Section 4.12 pesticide use is regulated by both State and Federal law. The use of these chemicals is compliant with all laws

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regulating pesticide use, and certified commercial applicators are utilized as required. Act 45 which was passed by the 2018 Hawai'i Legislature and effective on January 1, 2019 required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. This report as well as any other report required by law is publicly available from the respective government entity. The State of Hawai'i DOA's Pesticide Branch also provides regulatory oversight over EMI's pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. It is also noted that since January 2020 EMI committed to discontinuing use of Round-Up. This information has been included in the Final EIS as shown on pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations.

Comment 34: *If pesticides used for controls leech, seep, or runoff into the Upcountry water system what will EMI do?*

Response 34: As mentioned in Response #33 above, the use of pesticides will be within Federal and State regulations. Federal and State regulations require best management practices related to pesticide use which minimizes leeching into water resources.

Additionally, as noted in Response #33, EMI has committed to discontinuing its use of Round-Up. This commitment has been in effect since January 2020.

Comment 35: *What exactly is the applicant doing to build trust in the community that relies on the water that it is asking to use?*

Response 35: The Applicant has complied with the stated conditions of the revocable permits that have been granted by the BLNR, and that compliance involves transparency and working within the community. The conditions of the revocable permits include the submittal of quarterly reports that summarize the Applicant's water usage for that particular quarter, the distribution of that water on the Central Maui farm by field, and the additional information from the Applicant that includes (but is not limited to) the following:

1. That EMI is in compliance with the June 20, 2018 order of CWRM establishing the IIFS for East Maui.
2. That no water is wasted, and if the Board finds that a use of water is not reasonable and beneficial and does not comply with the permitted uses, such water uses shall be ceased within a timeframe determined by the DLNR.
3. A status update as to the degree to which the flow of each stream has been restored, and which structures have been removed as required by CWRM.

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4. An update on meetings of an interim committee established by the BLNR to discuss water usage issues in the License Area. This committee consists of five members, representing A&B, Maui Farm Bureau, Office of Hawaiian Affairs, Native Hawaiian Legal Corp, and the County of Maui.
5. An estimate of water requirements for each crop per acre per day

With respect to item #4 above, these meetings are particularly focused on ensuring EMI's use of diverted water remains as transparent as possible by mandating the establishment of a committee made up of a diverse group of members to discuss collective water usage issues in the area.

Moreover, the SIA, as well as Section 4.7.2 of the EIS recommends that there be community outreach by the Applicant. However, terms of the Water Lease are at the discretion of the BLNR, and the Water Lease lessee will comply with all such terms.

Comment 36: *What exactly is the applicant doing to communicate with local and county regulatory authorities regarding this DEIS and future developments around water use?*

Response 36: The EIS has been prepared under the procedural provisions of HRS, Chapter 343, and HAR, Title 11, Chapter 200, which allows for public review and participation. Early consultation prior to the preparation of the EIS Preparation Notice (EISPN) started in 2016. Specifically, pursuant to HAR 11-200-9(b)(1) which requires the applicant, at the earliest practicable time, to seek the advice and input of the lead county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur, the County of Maui Planning Department was consulted during every stage of the EIS process as noted in Chapter 9 of the EIS.

The State Office of Environmental Quality Control (OEQC) published the EISPN on February 8, 2017, and that publication initiated a 30-day public comment period. Following publication of the EISPN for the Proposed Action, two voluntary public scoping meetings were held to notify and initiate consultation with the community for the preparation of a Chapter 343, HRS, EIS. This process is discussed in Chapter 9 of the EIS. The purpose of this outreach process was to inform and obtain input from the community on relevant issues or concerns that should be considered in the preparation of the EIS documentation for the Proposed Action.

The Draft EIS was published on September 23, 2019 initiating a 45-day public comment period. A Draft EIS Notification was sent to numerous people and agencies, as shown in Table 9-2 of the Draft EIS, including the County of Maui's Department of Fire and Public Safety, Department of Environmental Management, Department of Housing and Human Concerns, Department of Parks and Recreation, Department of Planning, Department of Public Works, Department of

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Transportation, Department of Water Supply, Office of Economic Development, Department of the Corporation Counsel, Maui County Council, and Police Department. The Draft EIS Notification informed interested parties of the Proposed Action and solicited relevant public comment on subjects of concern for EIS documentation. The list of agencies that have been consulted with as well as participated in this EIS process is within Table 9-1 and Table 9-2 of the Draft EIS. Table 9-3 has been added to the Final EIS, which shows the various agencies that provided comments on the Draft EIS, all of which have been responded to as shown in Appendix N of the Final EIS.

Comment 37: *How does profiting a Canadian pension fund support the intent of Article XI Section 7 since Canadians are not our citizens, and clearly water and its benefits should be conferred to Hawaii citizens, not a foreign corporation or pension fund.*

Response 37: Please note that Article XI Section 7 of the Hawai'i State Constitution is related to water resources. The text of Article XI Section 7 states:

The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

The legislature shall provide for a water resources agency which, as provided by law, shall set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect ground and surface water resources, watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawaii's water resources.

CWRM is the agency that was established to administer Article XI Section 7 of the Hawai'i State Constitution through the State Water Code, Chapter 174C, HRS for the purpose of protecting the State's water resources. As discussed in Section 1.3.4 of the EIS, in June 2018, the CWRM set IIFS for 24 streams in the License Area. This is discussed in more detail in Response #20 above. Moreover, the Proposed Action provides numerous beneficial and reasonable offstream uses which are aligned with Article XI Section 7, such as perpetuating diversified agriculture in Central Maui and supporting domestic and agricultural water uses in Upcountry and Central Maui. See EIS Section 2.1. We also note that Article XI Section 3 of the Hawai'i Constitution is relevant to considerations related to the proposed Water Lease. It provides:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of

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agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.

Approximately 22,000 acres of the Central Maui agricultural fields to be farmed by Mahi Pono are designated as Important Agricultural Lands, and the continued supply of water to irrigation those lands was among the considerations undertaken by CWRM in setting the IIFS.

As discussed in Response #1 above, revenue generated from the Water Lease, as well as all other State leases and revocable permits, go to the State Special Land Development Fund, which benefits the State and Hawai'i citizens. Moreover, the economic and fiscal impacts of the Proposed Action are expected to have a beneficial impact for the State and Maui residents in the form of generating jobs, taxes paid to the state, the continuance of water delivery for domestic and agricultural uses to Upcountry and Central Maui, and increasing local food production, which impacts were assessed in the Economic and Fiscal Impact Study attached to the EIS as Appendix H and summarized in Section 4.7.3 of the EIS. The impacts of the Proposed Action on the agricultural economy are described in Section 4.7.4 of the EIS and Appendix I, the Agricultural and Related Economic Impacts assessment. This analysis is discussed in more detail above in response to your Comments #8 and #9.

Comment 38: In Conclusion I would like to share these comments with you: Hawaii will be much better off controlling its own water, obeying the public trust doctrines specific commands and returning any profits to the watersheds that make this life giving water. He who controls the water controls the future.

Response 38: Regarding your comment about Hawai'i being better off controlling its own water, please note that issuance, as well as the terms and conditions of, the Water Lease is within the purview of the State BLNR. Hence, the Applicant, if the Water Lease is issued, cannot take more water than what is allowed within the Water Lease, moreover the Applicant must comply with the CWRM D&O. The water is controlled by the State and its appropriate agencies.

Regarding water being a public trust, we acknowledge that the Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory

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provisions that, together with relevant case law, comprise the Public Trust Doctrine. As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. As previously noted in Response #30, Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action. See pages 1-25 to 1-27 of the Final EIS.

Comment 39: *Giving our waters and related revenues away to a foreign pension fund or other investor is not a sound financial plan for the state of Hawaii. Selling 90 MGD from East Maui at the current agriculture rate of \$1.10 would equal \$36 M/yr. If farmers on Oahu can make profits at higher (approximately double) rates than Maui's and California's rates are hundreds of times higher, it is not financially prudent for the State of Hawaii to give away such a precious and sacred resource almost for free (\$5/MGal).*

Response 39: Please note that the as discussed in Response #1 above, the revenue generated from the Water Lease goes to the State which is distributed into the State Special Land Development Fund. Moreover, please note as discussed in Response #23 above, the amount that the State has charged EMI/A&B for water at the source (about \$0.019 per thousand gallons) is comparable to the rates charged by the Central California Irrigation District (Appendix H, Munekiyo Hiraga, "Economic and Fiscal Impact Study," June 2019, Table 4). For Recent Sugar (2006 to 2013), the delivery cost was \$0.048 per thousand gallons (Appendix I, "East Maui Water Lease: Agricultural and Related Economic Impacts", Plasch Econ Pacific LLC, June 2019, Table 1). Thus, the total cost for delivered water was \$0.067 per thousand gallons (\$0.019 + \$0.048). Assuming that the State will continue to charge \$0.019 for water, the cost of delivered water in 2030 will increase to \$0.08 to per thousand gallons, depending on how much water is diverted from East Maui to Central Maui which has been calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Additionally, and as discussed in Response #21, the State BLNR will not be giving away any water. The amount of lease rent payments due under the Water Lease has not yet been determined, but that amount will be established by the BLNR pursuant to an appraisal to determine the fair market value of the Water Lease.

Comment 40: *Lastly, it will take decades to transition from where we are now to whatever is the prevailing paradigm that our future becomes. Let's all look to the BLNR and the CWRM as a guidepost to realize the commands of the Constitution Article XI Section 7: **Section 7.** The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.*

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Response 40: Your comments are acknowledged. As discussed in Response # 37 above, the Proposed Action is within the intent of Article XI Section 7 of the Hawai‘i State Constitution.

Comment 41: *It is incumbent upon you and your agencies and organizations to support the watersheds of Hawaii so that they may regain their capacity to supply abundant and life-giving Wai, but you all must realize that the watershed ecosystems need to be restored to make that possibility a reality.*

Response 41: Your comments are acknowledged. Please note, as discussed in Response #1 above, the Water Lease lessee will be subject to applicable requirements under HRS § 171-58 regarding watershed management plans. As discussed in EIS Section 2.1 (See pages 2-2 to 2-4 of the Final EIS), included in the content requirements for a watershed management are specific goals and objectives, as follows:

1. Goals
 - a. Identifies priority outcomes essential to maintain or restore biological integrity to the maximum extent practicable. Generally including, but not limited to:
 - i. Removal and control of non-native hooved animals (pigs, goats, deer, sheep, cattle) from important watershed forests.
 - ii. Removal or containment of damaging invasive plants and animals that threaten important watershed forests.
 - iii. Monitoring and controlling other forest threats including fires, predators, and plant diseases.
 - iv. Restoring and out-planting native species in important watershed areas and buffer zones.
 - v. Communication, outreach and community education to build capacity for citizen-based watershed protection.
2. Objectives
 - a. Description of specific management actions needed to achieve goals
 - b. Description of location targeting where the action will occur
 - c. Implementation schedules and timeframe
 - d. Identification of specific outcomes and performance metrics expected

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Sent: Monday, November 4, 2019 11:18 AM
To: Public Comment
Subject: FW: EMI Questions to Address

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

From: C. ALLEN GREENFIELD <cubypeanut@aol.com>
Sent: Monday, November 4, 2019 11:13 AM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Subject: EMI Questions to Address

Comments and questions,

How could you authorize a 30 year lease of a county water system when the applicant of a newly formed business has no history of water management, no corporate performance, no agriculture or livestock expertise demonstrated and no credit history?

How about a 5 year lease with requirements for extension conditional on demonstration and performance requirements to award an extension, perhaps an additional 5 years.

Why are there no allowances for water to promote local and regional farming for East Maui including Hana? Why does all the water go to central Maui?

Fisherman say that flowing streams provide nutrients for the attraction of local fish close to shore. This would make it more cost effective as there would don't be a need to go away from the shore to fish. Why is there not allocation of waters to promote stream flow to promote local fishing?

Thanks,

Allen Greenfield
Hana, HI

From: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Sent: Monday, November 4, 2019 9:12 AM
To: Public Comment
Subject: FW: Comments on the Draft EIS from A & B, EMI

From: C. ALLEN GREENFIELD <cubbypeanut@aol.com>
Sent: Sunday, November 3, 2019 8:40 AM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Subject: Comments on the Draft EIS from A & B, EMI

Dear Ian Hirokawa and the BLNR,

I submit my comments in response to the Draft Environmental impact Statement from EMI and A&B.

Now is the time for the County of Maui to step up and take their rightful responsibility for the people and NOT relinquish this precious water resource. The proposal of water rights to Mahi Pono is inconsistent with the cultural and public values of Maui and Hawaii Islands.

The request for lease of 30 years is extraordinarily and unjustifiably long length of time for any agreement. An agreement of this time frame would fail to anticipate known or unknown future factors which might affect this watershed's future including unforeseen natural occurrences, altercations, maintenance, and climatic change events.

In addition, any consideration of this exhaustive, lengthy draft, must first receive a thorough and complete review along with robust scrutiny from BLNR staff and Legal counsel supporting Maui Mayor and Council and Maui County. Given the length and breadth of this draft report, the current timeline is inappropriate for the County agencies, as well as the public, to give substantive comments. The County at a minimum must reevaluate the current timeline and allow more time to check and review this report as well as authorize additional rounds of staff and public review and input.

In my read of the first part of the report, I have the following comments and questions:

Have Mahi Pono estimates on page v, crops, yields, profits and potential jobs been verified?

The Mahi Pono farm plan page v, includes a utility scale renewable energy component that will further Hawaii's goals of having 100% renewable energy by 2045. This time period of 25 years is too far out for any useful benefit and should be by 2030.

Social Impact Assessment (SIA), Earthplan page x: "The SIA recommends that clearly defined interest groups, or stakeholder groups are established that include geographic communities, environmental, agriculture and business interests, and public agencies. Each group would be encouraged to reach consensus on their own needs, concerns, opportunities and possible solutions." This "feel good" section of a collaborative nature is not enforceable or supported by any regulatory guidance or codes and should not be included as submitted.

The Objective of Action in section 1-2, can be achieved through appropriate Maui County oversight and operation and **NO** lease is necessary.

Instream use, section 1-9, HRS 171C-71 (2) (D), numbers 8 and 9 have a long contentious history relating to what has been deemed appropriate for use of water for local irrigation and traditional/ceremonial, and these rights **MUST Not** be compromised in any way.

Section 2-1 states: "A substantial amount of private funds will be used to maintain and operate the EMI Aqueduct System." Using public funding for leased water; Definitely **NO**. Any lease agreement must charge appropriately to cover **ALL** expenses of the watershed and must not be a gift to a private corporate applicant paid for by the public.

Section 2.1.3.1 states: "The Upcountry Maui Water System serves a total population of approximately 35,251, and the County anticipates the population will grow to approximately 43,675 by 2030. As there is no "excess" supply of water for Upcountry Maui, the MDWS customers have been required to adhere to strict conservation measures during periods of drought." This is another reason the County should retain control of the entire system and ensure that upcountry Maui is guaranteed adequate supplies today and into the future. "Moreover, there is a long waiting list of Upcountry Maui residents seeking water meters, some of whom have been waiting for over a decade." This is inexcusable and another example of poor planning and management. Yet another reason to retain control and provide the necessary water resources. Conservation management by the County is imperative to provide for the future water needs of the public in an everchanging hydrologic environment.

Section 2.1.5 states: "An estimated 10 years will be required for Mahi Pono and lessees to remove volunteer sugarcane and weeds from the approximate 30,000 acres, amend soils, install field improvements, build warehouses and other structures, and plant crops." We have already experienced record numbers of fires this year and current regulations are ill prepared to safeguard the public and the stated estimate of 10 years is inappropriately long to ensure a safe environment in the drought years ahead.

Section 3.1.2 states: "January 2019 to include Mahi Pono, which intends to pursue diversified agriculture in Central Maui. This change in ownership has no track record and their performance remains untested at this point to warrant analysis." Yes, and Mahi Pono has demonstrated agricultural activities by bringing cattle in vacated grasslands, yet left thousands of acres of land abandoned with dry brush and sugar cane which has been a principal contributor to fire dangers on Maui. Contributing also to the increase of record heat in central Maui.

Section 3.3 states: "Under a 1938 agreement between the Territory of Hawai'i and A&B, A&B was given a perpetual right and easement to convey water through those portions of the EMI Aqueduct System located within State lands, and to divert the water so conveyed through the EMI Aqueduct System, and A&B granted the Territory a similar perpetual right and easement. This agreement is in place irrespective of the issuance of any Water Lease. The No Action alternative would result in no Water Lease being issued from the State. However, under the 1938 agreement and a related calculation involving isohyet analysis of rainfall patterns, it is understood that approximately 30% of the water in the License Area streams is derived from the privately owned lands. Therefore, the EMI Aqueduct System could continue to divert approximately 30% of the water available from the Collection Area, plus the 4.37 mgd from that portion of the Collection Area that is derived from privately owned lands outside of the License Area between Liko Gulch." **NO**... Based on an old, outdated agreement, this 1938 agreement should be **nullified**, their perpetual right of easement should be revoked, and the applicant should **NOT be** allowed to **extort water rights from the State**.

Please understand, I do not have the time to review this entire 2700 page draft, in the time allotted, nor do I possess the expertise to validate or substantiate this exhaustive revised draft. Because the comment period is nearly over, and for the reasons stated above, I strongly urge the BLNR, Maui Mayor, Council and Maui agencies **REJECT** this report, **Revoke** the 1938 agreement, request a more streamlined submittal and evaluate options for considering a 5-year lease with renewable options with substantive performance goals and objectives to support and enhance the Maui watershed, while Maui County retains control of the water rights and oversight operations.

Respectfully,

Allen Greenfield, Hana, HI



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September 3, 2021

Mr. Allen Greenfield
cubypeanut@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Keʻanae, Honomanū and Huelo License Areas

Dear Mr. Greenfield:

Thank you for comments dated November 3, 2019, and November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawaiʻi Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

November 3, 2019 Email

Comment 1: *I submit my comments in response to the Draft Environmental impact Statement from EMI and A&B.*

Now is the time for the County of Maui to step up and take their rightful responsibility for the people and NOT relinquish this precious water resource. The proposal of water rights to Mahi Pono is inconsistent with the cultural and public values of Maui and Hawaii Islands.

Response 1: We acknowledge your comments. However, please note that the authorization of the issuance of the Water Lease is not the County of Maui's decision. The decision lies with the State of Hawaiʻi Board of Land and Natural Resources (BLNR).

With regards to your comment that the Proposed Action is inconsistent with the cultural values, the Draft EIS adequately discusses the impacts of the Proposed Action both in terms of the effects on habitat and on traditional and customary Native Hawaiian resources and practices. Specifically, in terms of habitat, Appendix A and Section 4.2.1 of the Draft EIS presented the HSHEP model that was designed to quantify how various man-made changes affect native amphidromous stream animals, whether positive or negative, and is based on Statewide observations of these animals' distribution and habitat. The HSHEP model has been used to determine an appropriate balance between instream and offstream water uses. Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Impacts to terrestrial flora and fauna, including threatened and endangered species, are analyzed in Section 4.4 and Appendix C of the EIS. As it relates to traditional and customary resources and practices, please note that Cultural Surveys Hawaiʻi (CSH) provides a detailed and comprehensive report accounting the history of East Maui. This report is included in Appendix E and summarized in Section 4.5 of the EIS. The EIS includes an assessment of effects on native Hawaiian cultural resources and practices through the Cultural Impact Assessment (CIA) prepared by CSH and provided as Appendix F.

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The information provided satisfies the EIS content requirements. This information will also inform BLNR in the future, when it is deliberating on the issuance and terms of the Water Lease. Regarding the mandated protection of the Public Trust, the dual roles of the BLNR and its sister agency, the Commission on Water Resource Management (CWRM), as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine.

Under the Public Trust Doctrine, BLNR will have to balance competing considerations before making a decision on the Water Lease. The balancing that BLNR is required to perform under the Public Trust Doctrine was described at length by the Hawai'i Supreme Court in *In Re Water Use Permit Applications*, 94 Hawai'i 97, 9 P. 3d 409 (2000) ("Waiahole I") and summarized in Section 1.5 of the Final EIS, which has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action.

With regard to the potential effects of the Proposed Action on traditional and customary resources and practices, as discussed in the *Ka Pa'akai* decision, we acknowledge that BLNR will be required to "to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *Ka Pa'akai*, 94 Hawai'i at 35, 7 P. 3d at 1072. BLNR has previously so stated in its Findings of Fact, Conclusions of Law, and Decision and Order filed on March 23, 2007 in the contested case proceeding that is still pending regarding the Proposed Action (the 2007 D&O) as follows:

Public trust principles require that adequate provision be made for the protection of ***traditional and customary Hawaiian rights***, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture and navigation.

2007 D&O COL No. 6 at page 41 (citing *Waiahole I*). In its June 20, 2018 Findings of Fact, Conclusions of Law and Decision and Order (CWRMD&O), the CWRM also recited the State's constitutional obligation to consider the impacts of stream diversions in East Maui on traditional and customary practices of Native Hawaiians at pages 242 through 245, including the Supreme Court of Hawai'i's more recent holding on this subject in *State v. Pratt*, 127 Hawai'i 206, 277 P. 3d 300 (2012).

The EIS (including Appendix F) together with the CWRM D&O, provide ample information for the BLNR to consider regarding potential impacts to traditional and customary practices, and that will enable BLNR, at the point that it is deliberating on the Water Lease, to fulfill its constitutional obligation "to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *Ka Pa'akai* at, 94 Hawai'i at 35, 7 P. 3d at 1072.

Your comment regarding public values is unclear as it does not identify which public values you are referring to. The socio-economic impacts of the Proposed Action are addressed at length in Section 4.7 of the Draft EIS, and in further detail in Appendices G through I (Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report). Draft EIS Section 4.7 has subsections addressing impacts to populations and impacts (Section 4.7.1), impacts to social

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characteristics (Section 4.7.2), impacts to the economy and other fiscal considerations (4.7.3), and impacts to the agricultural economy. (4.7.4). The potential socio-economic impacts of the alternatives to the Proposed Action considered by the Draft EIS are analyzed in Section 3.4.11 (Social Characteristics), 3.4.12 (Economic and Fiscal Resources), and 3.4.13 (Agricultural and Related Economic Resources). The Draft EIS thoroughly addressed cumulative socio-economic impacts in Section 4.17. That discussion has been further supplemented on pages 4-331 to 4-336 of Section 4.17 by updates in the Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report.

Comment 2: *The request for lease of 30 years is extraordinarily and unjustifiably long length of time for any agreement. An agreement of this time frame would fail to anticipate known or unknown future factors which might affect this watershed's future including unforeseen natural occurrences, altercations, maintenance, and climatic change events.*

Response 2: We acknowledge your comments. Regarding your comments about the length of time the Water Lease is being requested for, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1 and the impacts of that alternative throughout Section 3.4. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover its planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Regarding your comment about the watershed's future, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding

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watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development by the water lessee and DLNR and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. pages 2-2 to 2-4 of Section 2.1 of the EIS have been updated to reflect this new information about the contents of an acceptable watershed management plan. The minimum content requirements under the category of "Goals" specifically addresses priorities to maintain or restore the biological integrity of the watershed, including but not limited to actions that call for managing invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Regarding maintenance, under the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System.

Regarding climate change, climate change is discussed in Section 4.3.1 of the Draft EIS and sea level rise is addressed in Section 4.3.2 of the EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

Section 4.3.1 of the Final EIS has been expanded to include information from the Archaeological Literature Review and Field Inspection (LRFI) (Appendix E), CIA (Appendix F), and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

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Comment 3: *In addition, any consideration of this exhaustive, lengthy draft, must first receive a thorough and complete review along with robust scrutiny from BLNR staff and Legal counsel supporting Maui Mayor and Council and Maui County. Given the length and breadth of this draft report, the current timeline is inappropriate for the County agencies, as well as the public, to give substantive comments. The County at a minimum must reevaluate the current timeline and allow more time to check and review this report as well as authorize additional rounds of staff and public review and input.*

Response 3: Please note that as discussed in Response #1 above, the decision regarding the acceptance of the EIS and authorization of the Water Lease lies with the BLNR, not the County of Maui. Please note that the EIS is a disclosure document and does not authorize any action.

Regarding your comment about the length and breadth of the Draft EIS and the inappropriate timeline to give substantive comments, please note that the 45-day period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 4: *In my read of the first part of the report, I have the following comments and questions:*

Have Mahi Pono estimates on page v, crops, yields, profits and potential jobs been verified?

Response 4: Your comments about whether the Mahi Pono estimates being verified is unclear. However, please note that the Mahi Pono farm plan was prepared by Mahi Pono’s farm team after consultation with Hawai‘i-based farmers and agricultural experts.

Comment 5: *The Mahi Pono farm plan page v, includes a utility scale renewable energy component that will further Hawaii's goals of having 100% renewable energy by 2045. This time period of 25 years is too far out for any useful benefit and should be by 2030.*

Response 5: Please note that full development of the proposed Mahi Pono farm plan is expected by 2030 before the year 2045 which is the State’s current target year to have 100% renewable energy.

Comment 6: *Social Impact Assessment (SIA), Earthplan page x: “The SIA recommends that clearly defined interest groups, or stakeholder groups are established that include geographic communities, environmental, agriculture and business interests, and public agencies. Each group would be encouraged to reach consensus on their own needs, concerns, opportunities and possible solutions.” This “feel good” section of a collaborative nature is not enforceable or supported by any regulatory guidance or codes and should not be included as submitted.*

Response 6: Your comment is unclear. The SIA, as well as Section 4.7.2 of the EIS recommends that there be community outreach by the Applicant. As discussed in Response #3 above, the EIS is a disclosure document and does not authorize any action or impose conditions. However, terms of the Water Lease are at the discretion of the BLNR, and the Water Lease lessee will comply with all such terms.

Comment 7: *The Objective of Action in section 1-2, can be achieved through appropriate Maui County oversight and operation and NO lease is necessary.*

Response 7: We respectfully disagree with your comment as this is discussed in Section 3.1.2 of the Draft EIS, as follows:

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During public scoping for the DEIS in 2016 and 2017, it was suggested that the EMI Aqueduct System should be brought under new ownership, without the further involvement of A&B and EMI, and potentially under public ownership. Ownership of the EMI Aqueduct System changed in January 2019 to include Mahi Pono, which intends to pursue diversified agriculture in Central Maui. Consideration of another change in ownership is too speculative at this point to warrant analysis. A change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action. As discussed elsewhere in this DEIS, EMI has been operating the EMI Aqueduct System since the start of construction in the 1870s. Few have the knowledge to operate and maintain this unique and complex system, consisting of approximately 388 separate intakes, 24 miles of ditches, and 50 miles of tunnels, as well as numerous small dams, intakes, pipes, 13 inverted siphons and flumes. Furthermore, the EMI Aqueduct System is not for sale, and forced acquisition of the system is projected to be prohibitively expensive, resulting in substantial costs to the public. For these reasons, this alternative is viewed as a highly speculative and unreasonable alternative, and one that would not meet the objectives of the Proposed Action. Therefore, it was dismissed from further review.

Hence, it was deemed to be speculative as the EMI Aqueduct System is not for sale, there had not been a cost appraisal of the system, and few have the skills or knowledge to operate the extensive and complex EMI Aqueduct System. Furthermore, should another entity manage the EMI Aqueduct System, the EMI Aqueduct System would still require repair and maintenance activities and access to the License Area. Accordingly, the impacts from this alternative are expected to be identical to the Proposed Action.

We are aware of the County Board of Water Supply (BWS) Temporary Investigative Group (TIG) Report, which was published after the Draft EIS, which explores the potential acquisition of the EMI Aqueduct System by the County, speaks directly to the “ownership change” alternative referenced in your comment. To provide further context, on July 19, 2019, the Maui County BWS formed the TIG to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System.

Based upon information available in relation to findings and conclusions of the TIG report, it is our assessment that the County’s potential acquisition of the EMI Aqueduct System remains speculative. Furthermore, much of the institutional knowledge needed to properly operate the EMI Aqueduct System would be lost under any change in ownership scenario. This could reduce the efficacy of the system, the new owner may not have the expertise needed to properly maintain it, and possibly lead to additional and unforeseen environmental impacts. Moreover, a change in ownership would presumably directly contradict the objectives of the Proposed Action as outlined within the EIS. It is noted that the TIG report's proposal for water rates for the Central Maui agricultural fields is nearly ten times that of what is being charged to the Agricultural Park and Upcountry agricultural users, thus rendering the economic viability of agriculture on the Central Maui fields unfeasible.

For purposes of assessment in this EIS, it is assumed that an alternative owner of the EMI Aqueduct System would be required to meet goals of the Proposed Action as described in this EIS, including meeting the Proposed Action's stated objective to support an economically feasible, sustainable diversified agricultural operation across the Central Maui agricultural fields.

For the reasons discussed above, the County’s acquisition of the EMI Aqueduct System, and the County’s pursuit of a water lease from the BLNR are viewed as speculative and an unreasonable

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alternatives. However, the existence and findings of the TIG Report has been acknowledged in Section 3.1.2 of the Final EIS. A copy of the TIG Report has been included in the Final EIS as Appendix P.

Comment 8: *Instream use, section 1-9, HRS 171C-71 (2) (D), numbers 8 and 9 have a long contentious history relating to what has been deemed appropriate for use of water for local irrigation and traditional/ceremonial, and these rights **MUST Not** be compromised in any way.*

Response 8: We acknowledge your opinion on the appropriateness of certain instream uses defined under HRS § 174C-3, namely "(8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and (9) The protection of traditional and customary Hawaiian rights." Please note that the statutory reference to HRS Chapter 171C was a typo in the Draft EIS which has been corrected in the Final EIS to reference HRS Chapter 174C.

The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that "existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted." Moreover, the prior licenses issued to EMI for the License Area in the past continued to recognize the rights of other property owners "for domestic purposes and the irrigation of kuleanas entitled to the same." See CWRM D&O, (Finding of Fact) FOF 55.

Similarly, the relevant revocable permits issued by the State include a clause whereby "*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water. . . .*" It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all constitutionally protected traditional and customary rights.

As discussed in Response #2 above, the Draft EIS adequately discusses the impacts of the Proposed Action both in terms of the effects on habitat and on traditional and customary Native Hawaiian practices. Specifically, in terms of habitat, Appendix A and Section 4.2.1 of the Draft EIS presented the HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to determine an appropriate balance between instream and offstream water uses. Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Impacts to terrestrial flora and fauna, including threatened and endangered species, are analyzed in Section 4.4 and Appendix C of the EIS. As it relates to traditional and customary, please note that CSH provides a detailed and comprehensive report accounting the history of East Maui. This report is included in Appendix E and summarized in Section 4.5 of the EIS. The EIS includes an assessment of effects on the cultural practices through the CIA provided as Appendix F.

The information provided satisfies EIS content requirements. This information will also inform BLNR in the future, when it is deliberating on the issuance and terms of the Water Lease. Under the Public Trust Doctrine, BLNR will have to balance competing considerations before making a decision on the Water Lease. The balancing that BLNR is required to perform under the Public Trust Doctrine was described at length by the Hawai'i Supreme Court in *In Re Water Use Permit Applications*, 94 Hawai'i 97, 9 P. 3d 409 (2000) ("Waiahole I") and summarized in Section 1.5 of the Final EIS.

With regard to the potential effects of the Proposed Action on traditional and customary practices, as discussed in the *Ka Pa 'akai* decision, we acknowledge that BLNR will be required to "to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *Ka Pa 'akai*, 94 Hawai'i at 35, 7 P. 3d at 1072. BLNR has previously so stated in its Findings of Fact,

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Conclusions of Law, and Decision and Order filed on March 23, 2007 in the contested case proceeding that is still pending regarding the Proposed Action (the 2007 D&O) as follows:

Public trust principles require that adequate provision be made for the protection of *traditional and customary Hawaiian rights*, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture and navigation.

2007 D&O COL No. 6 at page 41 (citing *Waiahole I*). CWRM, in its June 20, 2018 D&O, also recited the State's constitutional obligation to consider the impacts of stream diversions in East Maui on traditional and customary practices of Native Hawaiians at pages 242 through 245, including the Supreme Court of Hawaii's more recent holding on this subject in *State v. Pratt*, 127 Hawai'i 206, 277 P. 3d 300 (2012).

The EIS (including Appendix F) together with the CWRM D&O, provide ample information for the BLNR to consider regarding potential impacts to traditional and customary practices, and that will enable BLNR, at the point that it is deliberating on the Water Lease, to fulfill its constitutional obligation "to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *Ka Pa'akai* at, 94 Hawai'i at 35, 7 P. 3d at 1072.

Comment 9: *Section 2-1 states: "A substantial amount of private funds will be used to maintain and operate the EMI Aqueduct System." Using public funding for leased water; Definitely NO. Any lease agreement must charge appropriately to cover ALL expenses of the watershed and must not be a gift to a private corporate applicant paid for by the public.*

Response 9: Yes, you are correct that Section 2.1 of the EIS states that a substantial amount of *private* funds will be used to maintain and operate the EMI Aqueduct System. The sentence before this in Section 2.1 specifically notes that "*The Proposed Action will not require the use of public funds.*" Hence, no public funds will be used to implement the Proposed Action.

Comment 10: *Section 2.1.3.1 states: "The Upcountry Maui Water System serves a total population of approximately 35,251, and the County anticipates the population will grow to approximately 43,675 by 2030. As there is no "excess" supply of water for Upcountry Maui, the MDWS customers have been required to adhere to strict conservation measures during periods of drought." This is another reason the County should retain control of the entire system and ensure that upcountry Maui is guaranteed adequate supplies today and into the future. "Moreover, there is a long waiting list of Upcountry Maui residents seeking water meters, some of whom have been waiting for over a decade." This is inexcusable and another example of poor planning and management. Yet another reason to retain control and provide the necessary water resources. Conservation management by the County is imperative to provide for the future water needs of the public in an everchanging hydrologic environment.*

Response 10: We acknowledge your comments. However, as discussed in Response #7 above, we are aware of the County BWS TIG Report, which was published after the Draft EIS, on the potential acquisition of the EMI Aqueduct System by the County, speaks directly to the "ownership change" alternative referenced in your comment. To provide further context, on July 19, 2019, the Maui County BWS formed the TIG to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System.

Based upon information available in relation to findings and conclusions of the TIG report, it is our assessment that the County's potential acquisition of the EMI Aqueduct System remains speculative.

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Furthermore, much of the institutional knowledge needed to properly operate the EMI Aqueduct System would be lost under any change in ownership scenario. This could reduce the efficacy of the system, the new owner may not have the expertise needed to properly maintain it, and possibly lead to additional and unforeseen environmental impacts. Moreover, a change in ownership would presumably directly contradict the objectives of the Proposed Action as outlined within the EIS. It is noted that the TIG report's proposal for water rates for the Central Maui agricultural fields is nearly ten times that of what is being charged to the Agricultural Park and Upcountry agricultural users, thus rendering the economic viability of agriculture on the Central Maui fields unfeasible.

For purposes of assessment in this EIS, it is assumed that an alternative owner of the EMI Aqueduct System would be required to meet goals of the Proposed Action as described in this EIS, including meeting the Proposed Action's stated objective to support an economically feasible, sustainable diversified agricultural operation across the Central Maui agricultural fields.

For the reasons discussed above, the County's acquisition of the EMI Aqueduct System, and the County's pursuit of a water lease from the BLNR are viewed as speculative and an unreasonable alternatives. However, the existence and findings of the TIG Report has been acknowledged on pages 3-19 to 3-20 in Section 3.1.2 of the Final EIS. A copy of the TIG Report has been included in the Final EIS as Appendix P.

Comment 11: *Section 2.1.5 states: "An estimated 10 years will be required for Mahi Pono and lessees to remove volunteer sugarcane and weeds from the approximate 30,000 acres, amend soils, install field improvements, build warehouses and other structures, and plant crops." We have already experienced record numbers of fires this year and current regulations are ill prepared to safeguard the public and the stated estimate of 10 years is inappropriately long to ensure a safe environment in the drought years ahead.*

Response 11: We acknowledge your comments. Section 4.10 of the Draft EIS describes conditions in Central Maui, including a recognition of wildfires ("wildfires in Central Maui on fallow fields formerly in sugar cultivation, have generated intense smoke and dust over relatively short periods of time until they have been extinguished.") and projects that the transition from sugarcane to diversified agriculture may affect air quality from an increase in equipment emissions and in the very short-term, from dust from uncultivated land. Given the expanse of the agricultural fields in Central Maui, extra precaution must be exercised near its boundaries. Particularly in these areas, mitigation measures will include keeping fallow land to a minimum which is a recognized risk for wildfires, =. As discussed in Sections 7.4 and 7.5 of the EIS, more frequent wildfires may occur if agricultural activity in the Central Maui agricultural fields are abandoned due to the return of the natural arid and dry windy conditions, more weedy plants, and less/no water being used to irrigate the area. Under the Proposed Action, it is expected that there would be a reduction in risk of wildfires due to the irrigation of the Central Maui agricultural fields as Mahi Pono incrementally increases the amount of farmed acreage over time.

The Mahi Pono farm team also follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to their current farming activities.

Comment 12: *Section 3.1.2 states: "January 2019 to include Mahi Pono, which intends to pursue diversified agriculture in Central Maui. This change in ownership has no track record and their performance remains untested at this point to warrant analysis." Yes, and Mahi Pono has demonstrated agricultural activities by bringing cattle in vacated grasslands, yet left thousands of acres of land*

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abandoned with dry brush and sugar cane which has been a principal contributor to fire dangers on Maui. Contributing also to the increase of record heat in central Maui.

Response 12: Please note that nowhere in the EIS is it stated, “*This change in ownership has no track record and their performance remains untested at this point to warrant analysis.*” Rather Section 3.1.2 of the Draft EIS states:

Ownership of the EMI Aqueduct System changed in January 2019 to include Mahi Pono, which intends to pursue diversified agriculture in Central Maui. Consideration of another change in ownership is too speculative at this point to warrant analysis. A change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action.

Regarding the fallow land, please note that this is due to the amount of water that can be diverted to the Central Maui agricultural fields for irrigation of crops. Please note that Section 2.1.4 of the Final EIS has been revised to reflect Mahi Pono's current and near-term expected water use, which details average water being diverted from East Maui streams through the EMI Aqueduct System and how that water will be used. It important to note that as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

With regards to fire danger, please refer to Response #11 above.

Comment 13: Section 3.3 states: “*Under a 1938 agreement between the Territory of Hawai‘i and A&B, A&B was given a perpetual right and easement to convey water through those portions of the EMI Aqueduct System located within State lands, and to divert the water so conveyed through the EMI Aqueduct System, and A&B granted the Territory a similar perpetual right and easement. This agreement is in place irrespective of the issuance of any Water Lease. The No Action alternative would result in no Water Lease being issued from the State. However, under the 1938 agreement and a related calculation involving isohyet analysis of rainfall patterns, it is understood that approximately 30% of the water in the License Area streams is derived from the privately owned lands. Therefore, the EMI Aqueduct System could continue to divert approximately 30% of the water available from the Collection Area, plus the 4.37 mgd from that portion of the Collection Area that is derived from privately owned lands outside of the License Area between liko Gulch.*” **NO...** *Based on an old, outdated agreement, this 1938 agreement should be nullified, their perpetual right of easement should be revoked, and the applicant should NOT be allowed to extort water rights from the State.*

Response 13: Please note that as described in Section 3.3 of the Draft EIS, the Territory (now the State) of Hawai‘i and EMI entered into an agreement (the “1938 Agreement”) to facilitate and govern the continued auction of long term water licenses of the State-owned portions of the Collection Area so that, regardless of who the successful bidder at auction may be, the EMI Aqueduct System could continue to be operated across both the State-owned and Mahi Pono/EMI owned lands by EMI, the licensee (if not EMI), the State, or both, as the case may be. Section 3.3 of the EIS has been expanded to discuss this. Moreover, please note that the 1938 Agreement has also been included in the Final EIS as Appendix R. The 30% figure was agreed to between the BLNR and EMI at the end of 1987 to represent the amount of water originating from private (vs. State) lands in the 50,000-acre Collection Area, and was based on estimates of the average annual total yields from the streams in License Area. Prior to that time, the USGS provided a table in which USGS estimated, for each of the four license areas, the percentages of

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water estimated to have arisen on State land versus private land. This was explained in the testimony and exhibits submitted to CWRM throughout the contested case hearing on the Interim Instream Flow Standard (IIFS) petitions. Copies of relevant documents on this subject have been appended to the Final EIS as Appendices R-1, R-2, R-3, R-4, and R-5, and are further described in Section 3.3 of the Final EIS.

However, please note that a detailed legal analysis of the 1938 Agreement is beyond the scope of assessing environmental impacts within this EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the State-owned Nāhiku, Ke‘anae, Honomanū, and Huelo lands (License Area) for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 14: *Please understand, I do not have the time to review this entire 2700 page draft, in the time allotted, nor do I possess the expertise to validate or substantiate this exhaustive revised draft. Because the comment period is nearly over, and for the reasons stated above, I strongly urge the BLNR, Maui Mayor, Council and Maui agencies **REJECT** this report, **Revoke** the 1938 agreement, request a more streamlined submittal and evaluate options for considering a 5year lease with renewable options with substantive performance goals and objectives to support and enhance the Maui watershed, while Maui County retains control of the water rights and oversight operations.*

Response 14: We acknowledge your comments and we provide detailed responses to your points in the responses above.

November 4, 2019 Email

Comment 15: *How could you authorize a 30 year lease of a county water system when the applicant of a newly formed business has no history of water management, no corporate performance, no agriculture or livestock expertise demonstrated and no credit history?*

Response 15: Please note that the Water Lease has not been issued. As noted in Response #3 above, the EIS is a disclosure document and does not authorize any action. As discussed in Section 1.4 of the Draft EIS, by order dated July 8, 2016, the BLNR directed A&B to proceed with the preparation of an EIS. Prior to that, BLNR, by order dated April 14, 2016, had directed A&B to commence the EIS process and to provide a scope of work for the preparation of an environmental review document pursuant to Chapter 343, HRS. The BLNR instructed that the scope of work should distinguish between those matters that can be undertaken prior to the CWRM decision on the petitions to amend the IIFS, and those matters that require the final CWRM IIFS decision. On June 9, 2016, A&B submitted to the BLNR a Scope of Services for the Preparation of a Chapter 343, HRS Environmental Impact Statement for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. Hence, the Water Lease decision-making process will commence after the EIS process is complete.

Comment 16: *How about a 5 year lease with requirements for extension conditional on demonstration and performance requirements to award an extension, perhaps an additional 5 years.*

Response 16: We acknowledge your comments. However, as noted in Response #2 above, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in

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Section 3.2.2.1 and the impacts of that alternative throughout Section 3.4. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation.

Comment 17: *Why are there no allowances for water to promote local and regional farming for East Maui including Hana? Why does all the water go to central Maui?*

Response 17: Please note that not all of the water available in the East Maui streams is going to Central Maui. The CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the several of the streams in the License Area as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams whose IIFS were not amended by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the CIA, Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for taro were identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references. The CWRM did,

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however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration status); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Specifically, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O "*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*" (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS.

Comment 18: *Fisherman say that flowing streams provide nutrients for the attraction of local fish close to shore. This would make it more cost effective as there would don't be a need to go away from the shore to fish. Why is there not allocation of waters to promote stream flow to promote local fishing?*

Response 18: Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited

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areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of

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estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: [Arnie Koss](#)
To: ian.c.hirokawa@hawaii.gov; [Public Comment](#)
Subject: Draft Environmental Impact Statement(DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Area
Date: Thursday, November 7, 2019 10:29:10 AM

To: Ian Hirokawa, Earl Matsukawa, Wilson Okamoto

From:
Arnie Koss
arniekoss@gmail.com

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Area

Please accept my comments on the subject DEIS.

I care deeply about this proposed lease of public water because I am a 20-year resident of Maui and am an upcountry homeowner. I am concerned that access to and control of Maui's water rights and resources may have been illegally claimed to be the assets of private corporations seeking to advance their business agendas at the expense of the environment, other community members and the native Hawaiian people.

The draft EIS should include whether the State of Hawaii is meeting its fiduciary responsibility to Native Hawaiians regarding their claim to revenue sharing as granted by the State Constitution.

The draft EIS should include how to resolve the foundational question of who has the legal authority to control the management of Maui's water, decide on its value and who derives the benefits of its financial value.

The draft EIS should include a detailed opinion of the legal status, merits and validity of the respective party claims to access and control the water lease areas of Nahiku, Ke'anae, Honomanu, and Huelo.

The draft EIS should include and review the outcome and relative significance of Nelson v. the Hawaiian Homes Commission. There were six individual plaintiffs that filed a first amended complaint alleging that the State Defendants and DHHL had violated Article XII, Section 1 of the Hawai'i State Constitution.

The draft EIS should include a review, relevance and then render an opinion on the Hawaii state legislature constitutional provision to make sufficient sums available for the following purposes:

- (1) development of home, agriculture, farm and ranch lots;
- (2) home, agriculture, aquaculture, farm and ranch loans;
- (3) rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved;

(4) the administration and operating budget of the department of Hawaiian homelands; in furtherance of (1), (2), (3) and (4) herein, by appropriating the same in the manner provided by law.

The draft EIS should include a review and render an opinion of the Plaintiffs assertions that the State failed to make sufficient sums available to DHHL for the four purposes enumerated above.

The draft EIS should include a review and render an opinion on Count 2 (Nelson v Hawaiian Homes Commission), that the Plaintiffs alleged that DHHL breached its trust duties to its beneficiaries by failing to request sufficient sums from the State. The progress of this case and the appeals provides insight into the dissatisfaction of beneficiaries with regard to revenue sharing.

The draft EIS should include a detailed rationale if it is determined the concerns expressed above are seen as requests for information that are beyond the scope of this EIS action. The legitimate right of each party to participate in this EIS review and be legally eligible to enter into a water lease should be clearly documented before proceeding. If necessary, the proper authorities in the State of Hawaii government should be contacted to provide any needed information that would inform those directly involved with DEIS review.

The draft EIS should include a public recognition in all reports that there has been an ongoing legal challenge regarding the water rights in question and that while banks and other institutions may recognize the existing legal understanding (i.e. deeds) that have benefited certain companies for many years, the matter is not settled and therefore until it is, no water lease should be entered into.

I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,

Arnie Koss

Arnie Koss
arniekoss@gmail.com
808.280.1442



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September 3, 2021

Mr. Arnie Koss
arniekoss@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Koss:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I care deeply about this proposed lease of public water because I am a 20-year resident of Maui and am an upcountry homeowner. I am concerned that access to and control of Maui’s water rights and resources may have been illegally claimed to be the assets of private corporations seeking to advance their business agendas at the expense of the environment, other community members and the native Hawaiian people.*

Response 1: We acknowledge your comments. Please note that pursuant to Hawai‘i Revised Statutes (HRS) 171-58, “Disposition of water rights may be made by lease at public auction as provided in this chapter or by permit for temporary use on a month-to-month basis under those conditions which will best serve the interests of the State and subject to a maximum term of one year and other restrictions under the law...” Hence, it is prescribed by law for water rights to be made by lease as determined by the State of Hawai‘i Board of Land and Natural Resources (BLNR). Moreover, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B’s 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the

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judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

Comment 2: *The draft EIS should include whether the State of Hawaii is meeting its fiduciary responsibility to Native Hawaiians regarding their claim to revenue sharing as granted by the State Constitution.*

Response 2: Please note that it is not within scope of the EIS to investigate whether or not the State of Hawai'i is meeting its fiduciary responsibility with regards to revenue sharing. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

However, please note that the lessee of the proposed Water Lease will pay lease rent to the State. Moreover, the Office of Hawaiian Affairs (OHA) should receive 20 percent of the Water Lease rents while the Department of Hawaiian Home Lands (DHHL) should receive 30 percent of the water lease rents. The DHHL funds are deposited into the Native Hawaiian Rehabilitation Fund pursuant to Hawai'i State Constitution Article XII, Section 1, and is used to fund programs as prioritized in the Native Hawaiian Development Program Plan adopted by the Hawaiian Homes Commission. The financial impacts of the Water Lease as contemplated under the Proposed Action are discussed in detail in the analysis conducted for the Economic and Fiscal Impact Study report included as Appendix H and is summarized in Section 4.7.3 of the EIS.

Comment 3: *The draft EIS should include how to resolve the foundational question of who has the legal authority to control the management of Maui's water, decide on its value and who derives the benefits of its financial value.*

Response 3: Please note that this is not within the scope of the EIS. As noted in Response #2 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural

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water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

However, as noted in Response #1 it is prescribed by law for water rights to be made by lease as determined by the BLNR. The processes governing the use of the water are subject to the Public Trust Doctrine. The Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease. As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action as shown in pages 1-25 to 1-27.

Moreover, with regard to financial values, Section 2.1.5 of the Draft EIS states:

After the Final EIS (FEIS) is published and accepted by the BLNR, the State of Hawai'i will conduct appraisals of the water from the License Area, produce lease agreements and a Watershed Management Plan (refer to Section 2.1). Once this is complete the Water Lease will be put to public auction. Once the Water Lease is issued by the BLNR, under the Proposed Action, Mahi Pono can implement its proposed farm plan.

Hence, formal appraisals will be conducted after the EIS process is complete.

Comment 4: *The draft EIS should include a detailed opinion of the legal status, merits and validity of the respective party claims to access and control the water lease areas of Nahiku, Ke'anae, Honomanu, and Huelo.*

Response 4: Please note that this is not within the scope of the EIS to include a detailed opinion of the legal status, merits, and validity of the Applicant and BLNR. As noted in Response #2 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for

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the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 5: *The draft EIS should include and review the outcome and relative significance of Nelson v. the Hawaiian Homes Commission. There were six individual plaintiffs that filed a first amended complaint alleging that the State Defendants and DHHL had violated Article XII, Section 1 of the Hawai'i State Constitution.*

Response 5: Please note that this is not within the scope of the EIS. As noted in Response #2 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

However, specific information regarding the DHHL's future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes

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Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui), as shown in pages 2-4 to 2-7. This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. As explained in pages 2-4 to 2-7 of the Final EIS, the DHHL water reservation process involves several steps before a reservation amount is formally identified and approved. However, as of this time, it is our understanding that DHHL has not yet made its water reservation request to CWRM.

Comment 6: *The draft EIS should include a review, relevance and then render an opinion on the Hawaii state legislature constitutional provision to make sufficient sums available for the following purposes:*

- (1) development of home, agriculture, farm and ranch lots;*
- (2) home, agriculture, aquaculture, farm and ranch loans;*
- (3) rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved;*
- (4) the administration and operating budget of the department of Hawaiian homelands; in furtherance of (1), (2), (3) and (4) herein, by appropriating the same in the manner provided by law.*

Response 6: Please note that it is not within scope of the EIS to render an opinion on the Hawai'i State Legislature Constitutional provision to make sufficient sums available for the purposed listed in your Comment #6. As noted in Response #2 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 7: *The draft EIS should include a review and render an opinion of the Plaintiffs assertions that the State failed to make sufficient sums available to DHHL for the four purposes enumerated above.*

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Response 7: Please note that it is not within scope of the EIS to render an opinion of the plaintiffs assertions that the State failed to make sufficient sums available to the DHHL for the purposes listed in your Comment #6. As noted in Response #2 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B’s former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

However, specific information regarding the DHHL's future water reservation as it relates to the Proposed Action, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS and in Response #5 above.

Comment 8: *The draft EIS should include a review and render an opinion on Count 2 (Nelson v Hawaiian Homes Commission), that the Plaintiffs alleged that DHHL breached its trust duties to its beneficiaries by failing to request sufficient sums from the State. The progress of this case and the appeals provides insight into the dissatisfaction of beneficiaries with regard to revenue sharing.*

Response 8: Please note that it is not within scope of the EIS to render an opinion on Count 2 (Nelson v Hawaiian Homes Commission), that the Plaintiffs alleged that DHHL breached its trust duties to its beneficiaries by failing to request sufficient sums from the State. As noted in Response #2 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B’s former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

However, specific information regarding the DHHL's future water reservation as it relates to the Proposed Action, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS and in Response #5 above.

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Comment 9: *The draft EIS should include a detailed rationale if it is determined the concerns expressed above are seen as requests for information that are beyond the scope of this EIS action. The legitimate right of each party to participate in this EIS review and be legally eligible to enter into a water lease should be clearly documented before proceeding. If necessary, the proper authorities in the State of Hawaii government should be contacted to provide any needed information that would inform those directly involved with DEIS review.*

Response 9: Regarding your comment about the EIS should include a detailed rationale, as noted in Response #2 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B’s former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS. The EIS is an environmental disclosure document that assesses a proposed action against environmental resource categories. It is not a decision-making document.

With regards to your comment that each party needs to be legitimate right and eligibility to participate in this EIS review is unclear. However, as stated in Section 1.4 of the Draft EIS, “For the purposes of HRS Chapter 343, the applicant for the Water Lease is A&B, pursuant to orders of the BLNR in April and June of 2016, directing A&B to prepare an EIS.” Furthermore, as noted in Response #1 above, pursuant to Hawai‘i Revised Statutes (HRS) 171-58, “Disposition of water rights may be made by lease at public auction as provided in this chapter or by permit for temporary use on a month-to-month basis under those conditions which will best serve the interests of the State and subject to a maximum term of one year and other restrictions under the law...” Hence, it is prescribed by law for water rights to be made by lease as determined by the State of Hawai‘i Board of Land and Natural Resources (BLNR).

With regards to your comment that prior to proceeding, proper authorities in the State of Hawai‘i government should be contacted to provide any needed information that would inform those directly involved in EIS process, please note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M), of which many comments were provided by State and County agencies.

Comment 10: *The draft EIS should include a public recognition in all reports that there has been an ongoing legal challenge regarding the water rights in question and that while banks and*

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other institutions may recognize the existing legal understanding (i.e. deeds) that have benefited certain companies for many years, the matter is not settled and therefore until it is, no water lease should be entered into.

Response 10: As noted in Response #1 above, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

Comment 11: *I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.*

Response 11: We acknowledge your comments and appreciate your participation in this process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 S. Beretania Street. Suite 400
Honolulu, HI 96826

RECEIVED
NOV 06 2019
WILSON OKAMOTO CORPORATION

Please accept my comments on the Draft EIS o the proposed EMI 30 year lease.

I have been a Honopou resident landowner living in the East Maui Watershed area for the past 44 years.

The Draft EIS needs to include the following information:

How will the severe and ongoing destruction of the watershed be addressed?

Feral pigs, cows, deer have destroyed the forest and undergrowth, leaving muddy pockets and wallows that breed disease spreading mosquitoes. The rivers are filled with mud and invasive species have robbed the forest's ability to absorb the rainfall and release it gradually keeping the streams clear and clean. I have swam and lived around the streams in my neighborhood for over 4 decades and witnesses the alarming degradation.

A five year lease with an option to renew instead of a 30 year lease would be a better option.

EMI seems to have totally abandoned its roll as caretaker and protector of this public Treasure. It needs to earn the right to continue to manage this resource.

All streams should maintain a constant flow.

Leave 30%stream flow in the 13 streams. Share the water for the O'opu and other living things.

The Rainforest is degrading. I am asking that the DEIS include a plan on how this crisis will be addressed.

Sincerely,



Beverly Young
150 Puniawa Rd.
Haiku, HI. 96708



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Ms. Beverly Young
150 Puniawa Road
Haiku, HI 96708

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Young:

Thank you for comments received November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *How will the severe and ongoing destruction of the watershed be addressed?*

Response 1: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting

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native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Comment 2: *Feral pigs, cows, deer have destroyed the forest and undergrowth, leaving muddy pockets and wallows that breed disease spreading mosquitoes. The rivers are filled with mud and invasive species have robbed the forest's ability to absorb the rainfall and release it gradually keeping the streams clear and clean. I have swam and lived around the streams in my neighborhood for over 4 decades and witnesses the alarming degradation.*

Response 2: We acknowledge your comments. as discussed in Response #1 above, the lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans and will be required to jointly develop a watershed management plan with the DLNR. One of the goals of a watershed management plan is to identify priority outcomes essential to maintain and *restore* biological integrity to the maximum extent practicable which include but is not limited to:

1. Removal and control of non-native hooved animals (pigs, goats, deer, sheep, cattle) from important watershed forests.
2. Removal or containment of damaging invasive plants and animals that threaten important watershed forests.
3. Monitoring and controlling other forest threats including fires, predators, and plant diseases.
4. Restoring and out-planting native species in important watershed areas and buffer zones.
5. Communication, outreach and community education to build capacity for citizen-based watershed protection.

Additionally, Appendix C provides detailed avoidance and mitigation measures to minimize impacts of the Proposed Action to flora and fauna which are summarized in Sections 4.4.1 and 4.4.2 of the Draft EIS. Moreover, the discussion of these avoidance and mitigation measures has been expanded on as shown in pages 4-121 to 4-124 and pages 4-129 to 4-131.

With regards to mosquitos, please note that the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS.

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Although the HSheP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. Second, Hawaiian streams are naturally flashy (i.e., they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g., guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. Unfortunately, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed.

While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasiatus*) is established. Anecdotal observations made by Trutta staff members, support the continued presence of Culex mosquitoes under a wide range of stream flows as they reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i. Please note that Section 4.2.1 of the Final EIS has been updated to include the above discussions related to the Culex mosquito as shown in pages 4-58 to 4-61.

Specifically, as it relates to invasive species, it is noted in Appendix C that that low-elevation portions of the License Area are already highly impacted by invasive plants. However, it is noted in Appendix C that high-elevation portions of the License Area are predominately dominated by native species and is very likely to contain habitat for several endangered or threatened species. Impacts related to flora and fauna as a result of the Proposed Action are discussed in Section 4.4 of the EIS. Please note that Section 4.4.1 and Section 4.4.2 have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Comment 3: *A five year lease with an option to renew instead of a 30 year lease would be a better option.*

Response 3: We acknowledge your comments. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in*

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establishing successful diversified agricultural operations and crops that may take years to reach economic viability." The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Comment 4: *EMI seems to have totally abandoned its roll as caretaker and protector of this public Treasure. It needs to earn the right to continue to manage this resource.*

Response 4: We respectfully disagree with your comment. A&B (EMI is its subsidiary) was a founding member of the East Maui Watershed Partnership (EMWP), which was the first watershed partnership in the State of Hawai'i and which served as a model for other watershed partnerships throughout the State. The lands under the jurisdiction of the EMWP span over 100,000 acres which includes the entire License Area. The License Area is actively managed by

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the multiple agencies and organizations, including EMWP, Maui Invasive Species Committee (MISC), DLNR, etc., in partnership with EMI. EMI continues to work with MISC by reporting sighting of invasive weeds and coordinating access in these areas, which are well below the 3,000' level. EMI personnel also monitor the License Area for signs of feral ungulates.

Comment 5: *All streams should maintain a constant flow. Leave 30% stream flow in the 13 streams. Share the water for the O'opu and other living things.*

Response 5: We acknowledge your comments. With regards to your comment about leaving 30% flow in the 13 streams, please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream." Under the Proposed Action, the proposed Water Lease requests to divert the maximum amount of water from the License Area after compliance with the CWRM D&O. Please note that the non-petitioned streams were included as part of the overall analysis of the EIS and associated technical studies. Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The HSheP model in Appendix A and summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species, including 'o'opu. Due to an increase in streamflow under the Proposed Action when compared to historical diversion rates, 'o'opu are anticipated to have an increase in habitat units (HU). However, these HU will slightly decrease from current conditions as more water is gradually diverted as the Mahi Pono farm plan develops to full build-out as outlined in Section 4.2.1 of the EIS.

Comment 6: *The Rainforest is degrading. I am asking that the DEIS include a plan on how this crisis will be addressed.*

Response 6: We acknowledge your comments. As noted in Response #1 Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses

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invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: [Hana Night Audit](#)
To: [Public Comment](#)
Subject: DEIS East Maui Water Lease
Date: Thursday, November 7, 2019 1:33:13 AM

Board of Land and Natural Resources

1151 Punchbowl St

Honolulu Hi 96813

Attention Ian Hirokawa

ian.c.hirokawa@hawaii.gov

A&B/EMI

Wilson Okamoto Corp

1907 S Beretaina St

Suite 400

Honolulu 96826

waterleaseeis@wilsonokamoto.com

From: Bill Fuhrmann

63 Keanini Drive

P.O. Box 183

Hana. Hi 96713

hanabillfuhrmann@gmail.com

Gentlemen:

Please find below my comments to:

DEIS East Maui Water Lease

Project: Proposed Lease (Water Lease) for the Nahiku, Keanae, Honomanu and Huelo License Areas

The Economic impact to the residents of the Hana area

Background

For years, to see cascading waterfalls and full stream flows, visitors needed to travel the Hana Road (note: the "Hana Road" as herein expressed is viewed as the narrow winding road to the Hana area, not as the entirety of Hana Highway which begins in Kahului) during periods of fairly considerable and consistent rainfall, which, as most of us Hana area residents know, is when the traveling is most treacherous, avoiding deep pot holes full of water; rocks, dirt and vegetation falling down onto the roads; rock slides and landslides inhibiting part of the width of the road or worst blocking the entire width of the road; limited visibility;; bridges, mostly being the lower ends of the roadways, being full

of water.

Recently, the scenic vistas, waterfalls cascading, streams flowing, along the Hana Road became revitalized over the last couple of years, coinciding with the demising of the sugar crops of HC&S and the lessening demand for diversions of East Maui streams. This revitalizing of scenic vistas has resulted in significant increase of day visitors to the Hana area correlating to significant increase of vital economic resources (day visitor spending) to the Hana area. (For this discussion, Hana area includes all communities, areas of residencies along the Hana Road, including the road to Kipahulu's Oheo Haleakala National Park area.)

This increase in road traffic is also the main root to the "traffic congestion problems" faced by the Hana based drivers traversing the Hana Road as well.

Noteworthy, the day visitor to the Hana area also contributes to the visitor economy of the island, another day's accommodations on the island, another day's car rental with the additional fuel revenue to cover the drive to and from the Hana area, the County's share of the inherent (fuel, accommodations, real property, vehicle) taxes, the workforce requirements to service these accommodations, service the vehicles rented, provision of meals for the additional days stayed on the island. Further, the revenues generated for tour van companies (located outside of the Hana Area) who book and transport visitors to and from Hana.

Need to be answered:

First: Identify the streams which are considered "scenic vistas".

(Fairly competent sources could be Tour drivers transporting day visitors to and from Hana along the Hana road.)

Second: Will proposed diversions reduce the attractiveness of the scenic vistas, the waterfalls cascading, the streams flowing, which currently attract many day visitors to the Hana area?

Third: Will proposed diversions reduce number of day visitors to the Hana area?

Fourth: What will be the economic effects of reduced day visitor traffic to the Hana area?

- (a) To Hana area residents?***
- (b) To Hana area businesses?***

Fifth: What will be the economic effects of reduced day visitor traffic to the Hana area?

- (a) To Maui Island economy?***
- (b) To tax revenues of County of Maui and to the State of Hawaii?***

Mahalo for your considerations of these concerns. Looking forward to your responses.

From: [Hirokawa, Ian C](#)
To: [Public Comment](#)
Subject: FW: DEIS - East Maui Water Lease
Date: Thursday, November 7, 2019 9:36:17 AM

From: Hana Night Audit <hananightaudit@travaasa.com>
Sent: Thursday, November 7, 2019 1:30 AM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Subject: DEIS - East Maui Water Lease

Board of Land and Natural Resources
1151 Punchbowl St
Honolulu Hi 96813
Attention Ian Hirokawa
ian.c.hirokawa@hawaii.gov

A&B/EMI
Wilson Okamoto Corp
1907 S Beretaina St
Suite 400
Honolulu 96826
waterleaseeis@wilsonokamoto.com

From: Bill Fuhrmann
63 Keanini Drive
P.O. Box 183
Hana, Hi 96713
hanabillfuhrmann@gmail.com

Gentlemen:

Please find below my comments to:

DEIS East Maui Water Lease

Project: Proposed Lease (Water Lease) for the Nahiku, Keanae, Honomanu and Huelo License Areas

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Recently, the scenic vistas, waterfalls cascading, streams flowing, along the Hana Road became revitalized over the last couple of years, coinciding with the demising of the sugar crops of HC&S and the lessening demand for diversions of East Maui streams. This revitalizing of scenic vistas has resulted in significant increase of day visitors to the Hana area correlating to significant increase of vital economic resources (day visitor spending) to the Hana area. (For this discussion, Hana area includes all communities, areas of residencies along the Hana Road, including the road to Kipahulu’s Oheo Haleakala National Park area.)

This increase in road traffic is also the main root to the “traffic congestion problems” faced by the Hana based drivers traversing the Hana Road as well.

Noteworthy, the day visitor to the Hana area also contributes to the visitor economy of the island, another day’s accommodations on the island, another day’s car rental with the additional fuel revenue to cover the drive to and from the Hana area, the County’s share of the inherent (fuel, accommodations, real property, vehicle) taxes, the workforce requirements to service these accommodations, service the vehicles rented, provision of meals for the additional days stayed on the island. Further, the revenues generated for tour van companies (located outside of the Hana Area) who book and transport visitors to and from Hana.

Need to be answered:

First: Identify the streams which are considered “scenic vistas”.

(Fairly competent sources could be Tour drivers transporting day visitors to and from Hana along the Hana road.)

Second: Will proposed diversions reduce the attractiveness of the scenic vistas, the waterfalls cascading, the streams flowing, which currently attract many day visitors to the Hana area?

Third: Will proposed diversions reduce number of day visitors to the Hana area?

Fourth: What will be the economic effects of reduced day visitor traffic to the Hana area?

(a) To Hana area residents?

(b) To Hana area businesses?

Fifth: What will be the economic effects of reduced day visitor traffic to the Hana area?

(a) To Maui Island economy?

(b) To tax revenues of County of Maui and to the State of Hawaii?

Mahalo for your considerations of these concerns. Looking forward to your responses.



WILSON OKAMOTO
 CORPORATION
 INNOVATORS • PLANNERS • ENGINEERS

10238-04
 September 3, 2021

Mr. Bill Fuhrmann
 63 Keaniani Drive
 P.O. Box 183
 Hana, HI 96713
 hananightaudit@travaasa.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Bill Fuhrmann:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *For years, to see cascading waterfalls and full stream flows, visitors needed to travel the Hana Road (note: the “Hana Road” as herein expressed is viewed as the narrow winding road to the Hana area, not as the entirety of Hana Highway which begins in Kahului) during periods of fairly considerable and consistent rainfall, which, as most of us Hana area residents know, is when the traveling is most treacherous, avoiding deep pot holes full of water; rocks, dirt and vegetation falling down onto the roads; rock slides and landslides inhibiting part of the width of the road or worst blocking the entire width of the road; limited visibility; bridges, mostly being the lower ends of the roadways, being full of water.*

Recently, the scenic vistas, waterfalls cascading, streams flowing, along the Hana Road became revitalized over the last couple of years, coinciding with the demising of the sugar crops of HC&S and the lessening demand for diversions of East Maui streams. This revitalizing of scenic vistas has resulted in significant increase of day visitors to the Hana area correlating to significant increase of vital economic resources (day visitor spending) to the Hana area. (For this discussion, Hana area includes all communities, areas of residencies along the Hana Road, including the road to Kipahulu’s Oheo

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Haleakala National Park area.) This increase in road traffic is also the main root to the “traffic congestion problems” faced by the Hana based drivers traversing the Hana Road as well.

Response 1: It is recognized that waterfalls and stream flows are part of the scenic vistas that attract visitors to East Maui and that these visitors contribute to the economy in Hāna. Although data is not available on number of visitors to East Maui, it is noted that the years since HC&S has halted sugar cultivation has also coincided with record numbers of visitor arrivals to the State of Hawai‘i and island of Maui. Between 2014 and 2019, data from the State of Hawai‘i, Department of Business, Economic Development, and Tourism indicates that visitor arrivals to Maui have increased from 2.4 million visitors to 3.1 million visitors.

It is discussed throughout the EIS that the amount of water available for diversion through the EMI Aqueduct System should the Water Lease be issued, will be limited by the IIFS established under the CWRM D&O. The CWRM D&O limits the amount of water that can be diverted, and those limitations apply under all weather conditions, including when the natural flow is low due to dry weather. Hence, the amount of water that can be diverted during dry weather conditions would be substantially less than when sugar was being cultivated. We also note that in setting the IIFS, CWRM took into account “Aesthetic values such as waterfalls and scenic waterways.” This is reflected in Findings of Fact made by CWRM in the CWRM D&O as follows: “When setting IIFS, the information that is considered in connection with aesthetic values such as waterfalls and scenic waterways is the presence of scenic views, waterfalls and whether there is tourism in the area.” and “Aesthetics is a multi-sensory experience related to an individual’s perception of beauty. As a subjective value, aesthetics cannot be quantitatively determined. Elements, such as waterfalls and cascading plunge pools that appeal to an observer’s visual and auditory senses.” (CWRM D&O, FOF 70, 71) and numerous other FOF that addressed the aesthetic values of the specific streams.

With the limitations on the amount of water diverted, adverse impacts to tourism due to streamflow are not anticipated. Rather, tourism in East Maui represents a subset of the overall Maui tourism economy and trends in visitors to Hāna will correlate with trends in overall visitor arrivals to the State and island. Please note that this has been added to Section 4.9 of the Final EIS as shown in pages 4-311 to 4-312.

Comment 2: *Noteworthy, the day visitor to the Hana area also contributes to the visitor economy of the island, another day’s accommodations on the island, another day’s car rental with the additional fuel revenue to cover the drive to and from the Hana area, the County’s share of the inherent (fuel, accommodations, real property, vehicle) taxes, the workforce requirements to service these accommodations, service the vehicles rented, provision of meals for the additional days stayed on the island. Further, the revenues generated for tour van companies (located outside of the Hana Area) who book and transport visitors to and from Hana.*

Response 2: We acknowledge your comments. It is well known that Hawai‘i’s visitor economy is a major contributor to all the islands’ local economies as well as the overall State economy. As noted in Response #1 above, between 2014 and 2019, data from the State of Hawai‘i, Department of Business, Economic Development, and Tourism indicates that visitor arrivals to Maui have increased from 2.4 million visitors to 3.1 million visitors.

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Comment 3: *Need to be answered:*

First: Identify the streams which are considered “scenic vistas”.

(Fairly competent sources could be Tour drivers transporting day visitors to and from Hana along the Hana road.)

Response 3: Please note that the entire Road to Hāna is categorized as a scenic vista. As discussed in Section 4.9 of the Draft EIS:

Several scenic view planes can be found within the vicinity of the License Area. Specifically, the License Area is located along the slopes of Haleakalā in East Maui, and affords views of the ocean to the north and the peak of Haleakalā to the south. The scenic drive along the Hāna Highway was recognized in 2000 when President Clinton designated the Hāna Millennium Legacy Trail. The following year it was listed in the National Register of Historic Places. The drive along Hāna Highway is notable for views of waterfalls, including those in streams flowing out of the License Area. The highway also features waysides, lookouts and trails discussed Section 4.7.1.

As noted in Response #1 above, CWRM took into account “Aesthetic values such as waterfalls and scenic waterways.” This is reflected in Findings of Fact made by CWRM in the CWRM D&O as follows: “When setting IIFS, the information that is considered in connection with aesthetic values such as waterfalls and scenic waterways is the presence of scenic views, waterfalls and whether there is tourism in the area.” and “Aesthetics is a multi-sensory experience related to an individual’s perception of beauty. As a subjective value, aesthetics cannot be quantitatively determined. Elements, such as waterfalls and cascading plunge pools that appeal to an observer’s visual and auditory senses.” (CWRM D&O, FOF 70, 71) and numerous other FOF that addressed the aesthetic values of the specific streams.

The streams that the CWRM D&O recognized as having opportunities for scenic views are Waikamoi, Puohokamoa, Ha’ipua’ena, Honomanū, Nua’ailua, Pi’ina’au, ‘Ōhi’a, Waiokamilo, Wailuānui, West Wailuāiki, East Wailuāiki, Kopili’ula, Waiohue, Hanawī, and Makapipi streams. Please note that this has been added to Section 4.9 of the Final EIS as shown in pages 4-311 to 4-312.

Comment 4: *Second: Will proposed diversions reduce the attractiveness of the scenic vistas, the waterfalls cascading, the streams flowing, which currently attract many day visitors to the Hana area?*

Response 4: The Proposed Action is not anticipated to have adverse impacts on scenic resources in the East Maui region subject to assessment in this EIS. As noted in Response #1 above, CWRM took into account “Aesthetic values such as waterfalls and scenic waterways.” This is reflected in Findings of Fact made by CWRM in the CWRM D&O as follows: “When setting IIFS, the information that is considered in connection with aesthetic values such as waterfalls and scenic waterways is the presence of scenic views, waterfalls and whether there is tourism in the area.” and “Aesthetics is a multi-sensory experience related to an individual’s perception of beauty. As a subjective value, aesthetics cannot be quantitatively

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determined. Elements, such as waterfalls and cascading plunge pools that appeal to an observer's visual and auditory senses.” (CWRM D&O, FOF 70, 71) and numerous other FOF that addressed the aesthetic values of the specific streams. No significant impacts on visual resources in the region are anticipated because no new construction or land alteration is planned for the License Area. However, in the short-term, measuring from the current time, where diversions are lower due to reduced, but growing agricultural activity in Central Maui, against the time when Mahi Pono's diversified agriculture needs begin to use the maximum amount of water permitted, there will be a decrease in stream flows and waterfalls that can be viewed along Hāna Highway. However, these changes must be considered in a historical context as well: the impacts to such visual resources under the Proposed Action will be far less than the impacts over the years of sugarcane operations when vastly more water was diverted from East Maui than is planned under the Proposed Action.

Comment 5: *Third: Will proposed diversions reduce number of day visitors to the Hana area?*

Response 5: As noted in Response #1 above, with the limitations on the amount of water diverted, adverse impacts to tourism due to streamflow are not anticipated. Rather, tourism in East Maui represents a subset of the overall Maui tourism economy and trends in visitors to Hāna will correlate with trends in overall visitor arrivals to the State and island.

Comment 6: *Fourth: What will be the economic effects of reduced day visitor traffic to the Hana area?*

(a) To Hana area residents?

(b) To Hana area businesses?

Fifth: What will be the economic effects of reduced day visitor traffic to the Hana area?

(a) To Maui Island economy?

(b) To tax revenues of County of Maui and to the State of Hawaii?”

Response 6: As noted in Response #1 and Response #6 above, with the limitations on the amount of water diverted, adverse impacts to tourism due to streamflow are not anticipated. Rather, tourism in East Maui represents a subset of the overall Maui tourism economy and trends in visitors to Hāna will correlate with trends in overall visitor arrivals to the State and island.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Maka808 M <makamorondos@gmail.com>
Sent: Wednesday, November 6, 2019 10:22 PM
To: Public Comment
Subject: Water lease Opposition
Attachments: DEIS Water Lease Opposition.docx

To whom it may concern,

My name is Casey Morondos. I grew up in Hana but now reside in Makawao. I strongly disagree with The Proposed Water Lease for the Nahiku, Ke'anae, Honomanu, and Huelo License Draft Environmental Impact Statement other known as the "D.E.I.S." This million dollar business, Mahi Pono, still in its infancy has acquired 41,000 acres of sugarcane land and 15,000 acres of E.M.I (East Maui Irrigation) land. This new company created in late 2018, has a goal of ultimately having control of the water or filling their pockets either way. They claimed in their 2,700 page draft that the people and the environment would not be affected by the disappearance of our water. They have not provided any evidence that supports their claim. However there is plenty of evidence from years of desolation when A&B (Alexander & Baldwin), Mahi Pono's predecessor, had diverted away the wa Terry. This is Hawai'i where "Ola I ka Wai." Our water is our life! Despite several claims, our delicate eco-system has been severely un-balanced and is threatened once more to say goodbye to a group of already endangered species. not only will Nature suffer but also those who depend on the rivers and the ocean to feed there families.

This company has made a statement saying that there will be no impact on the environment when they divert all of the water. They are wrong. There are many different species that exist only in their fresh water habitat. Let me first explain the different areas within a river. There is "Ki'u Wai," the pool area where it is deep with little movement. There is "Wai Ko'ie'ie," the run where the water moves swiftly. "Kahena Hulili," the riffle is where the water is shallow but also fast moving. The "Waialele" or the waterfall is when water will fall vertically before continuing downstream. All of these which connect down to the "Muliwai" or the estuary. This is where the river connects to the ocean producing a salt/fresh water mix. Now within each of these parts of river strive different stream life. All of whom need more than a trickle of water to survive. Most commonly found species within these waters are of O'opu, 'Opae and snail variety. The "O'opu Nakea" lives in the Ki'o Wai and feeds off of fresh water Algae, small crustaceans and worms. Flowing water that reaches the oceans is crucial for any 'O'opu life cycle. The eggs are laid, hatched and the larvae will drift down into the ocean for 4 to 6 months before traveling back upstream to grow and respawn. The "Opae Kala'ole" is an endemic fresh water shrimp. They dwell within the Kahena Hulili or the riffle. Although if threatened, they have been known to escape by climbing the waterfall. Their diet consists of algae and animal matter. Hawaiians considered this a favorite food and often referred to their rivers as a " Natural Refrigerator." Within the Kahena Hulili, the water is shallow but also fast moving. This helps the leaves build up in shallow areas making it perfect hunting grounds for numerous stream insects. The "O'opu Nopili" also prefers the fast moving water. If thriving, these fishes are indicators of a healthy river. The "O'opu Nopili" also have to spawn in the muliwai. Within the Waialele or the waterfall travels the "O'opu Alamo'o." These O'opu have a special dorsal fin combined with adept climbing skills. This makes them perfect to travel vertically up any waterfall preferring the cleaner, undisturbed streams. They eat algae and small invertebrates. Finally all of these pieces

of river connects to a Muliwai or “hapa” wai. The estuary that plays a vital part in the O'opu survival as well as other fishes. The special mixture of salt and fresh water is essential for the respawn. Here is where the prawns live. The 'Opae Oeha'a thrives in the muliwai and it eats algae and animal matter. There are only three endemic neretid snails found in Hawai'i. The Hihiwai or the fresh water snail flourishes in fresh water but the eggs they lay will be washed out into the ocean. They will spend most of their juvenile life within the salt water but eventually pulling themselves back upstream with their strong, muscular foot. These were well known to be a delicacy of the olden Hawaiians. The shells of the Hihiwai has been found in refuse piles in the ruins of ancient Hawaiian settlements. The Auku'u bird or the Night Heron has also favored Hihiwai as a source of food. But they also eat other river inhabitants such as crustaceans, frogs and fish. These birds were once well known to populate O'ahu and its many rivers but has since disappeared since the many river modifications. All of these species have one common mortal need. The river must be flowing. There must be enough water in our streams in order to reach the ocean. Do not take away away their habitat. A 30 year lease would be too long for these species to be without water. Taking away the water would be to cause the very extinction of this wildlife, this form of sustenance. The greatest fertile land is on East Maui, not in Central Maui.

Another thing to worry about is the cultural loss that the Community will feel. As I have previously mentioned, all of these river creatures are rare delicacy. Although I have not mentioned the effects on the ocean life under the circumstances, let's not forget about the effects that further support my resounding disapproval. One main food source from the ocean is the 'Akule fish. Since the return of the water after the closure of the Sugar Mill, there has been a bounty of 'Akule. The communities often come together when the fishing boats get back and work side by side to remove the fishes from the net. By the time the nets are cleared, the fish is then equally separated and passed out for each family who stayed to help. This interaction helps to bring together the community while keeping our Cultural traditions alive. Another tradition that needs to also be upheld is the gathering of 'Opae and O'opu. The taste for these river delicacies have been passed down through our generations. Now without the water, we will lose this food source forever. They will not reappear after 30 years. Another issue included in the Draft Lease was the clause that allows private property to be accessed without permission to get to the river. This is a violation of rights. There is no way this should be allowed. Neither should they be able to divert from anyone's property either. A disturbing fact that Mahi Pono did not mention in inkling about saving any water for The Department of Hawaiian Homelands. How is residency being devoid of living water, not a cultural impact? They also falsified that if not granted the lease, Upcountry Maui would not get water. How do false facts lure an entire State into trusting that this company will have our well-being in mind? This is not the kind of company that I would trust to have absolute control of our water for 30 years.

I implore to the State, to BLNR, to anyone who has a position of power, to not allow this to happen. I know one letter wont make a difference but maybe my letter will spark

ideas which would better protect the East Maui Water from abuse. I have a suggestion of creating a Board of the Waters of Nahiku, Ke'anae, Honomanu and Huelo Ahupua'a. Each community will elect one spokesperson to sit on the board to represent their communities ideas. This Board of community members would be ideal to make any decisions concerning the water because their very likelihood depends on it. This way the public would be able to control who and where the water is going and how much to divert without any harm. The rights to our water should not be sold for the sole purpose of profit. The State defines water as a " Public Trust." For Hawaii's Water Resources to be controlled and regulated for the benefits of it's people. That does not mean to sell ownership to a company that was only created because of the want to buy land and water. They claim to be a farming company but have done little farming since their random poor into existence. Why isn't there rules that a company needs to be in business for a minimum of 5 years before applying with something as drastic as a 2,700 page draft asking for 30 years of control. Why make it so easy for a brand new company with big pockets and bad intentions to buy their way into power. Another requirement should be for the drafting company to give e the public enough time to thoroughly inspect their proposed document. The last and final request from me is that the BLNR prepare their own draft and have a public auction. This way the BLNR can control the terms. All the while the public can be fully aware of the details concerning our water. Everything I have presented would be a better solution. There is no benefits except for the pockets of Mahi Pono. Why not deny them their lease? There will be no extinction of any stream or ocean life. If the lease is denied, A&B will still have to rebate Mahi Pono approximately \$31 million dollars. This solidifies the fact that Mahi Pono's only interest is power and money. That is why I'm writing. I'm tired of our island and culture suffering because of greed and money. Above all else should come self-preservation to ensure the safety to uphold our culture, to preserve our Endemic creatures and for the safe-keeping of our people. Since when is "money" more important than culture? I plead with whoever this letter reaches to not give Mahi Pono any power over anything. Deny their request for the sake of our stream life. Let them collect from A&B and let ok ur streams, our creatures and our people thrive! Stop this before it is too late to fight for our water back. Do not let Mahi Pono and their private California Lawyer the satisfaction. Stand by our island and its Natives.

I hope this letter provides enough insights into why this lease is unacceptable. I do hope that my ideas will be considered at least. In my sincerity, I do hope my letter will make a difference. Do not turn your backs on us.

From the heart, Casey Morondos.



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Casey Morondos
makamorondos@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Casey Morondos:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *My name is Casey Morondos. I grew up in Hana but now reside in Makawao. I strongly disagree with The Proposed Water Lease for the Nahiku, Ke'anae, Honomanu, and Huelo License Draft Environmental Impact Statement other known as the "D.E.I.S."*

Response 1: We acknowledge your comments and understand that you disagree with the issuance of a Water Lease assessed within the EIS.

Comment 2: *This million dollar business, Mahi Pono, still in its infancy has acquired 41,000 acres of sugarcane land and 15,000 acres of E.M.I (East Maui Irrigation) land. This new company created in late 2018, has a goal of ultimately having control of the water or filling their pockets either way.*

Response 2: Please note as discussed in Section 1.1 of the Draft EIS, A&B sold majority of its former sugarcane lands in Central Maui to Mahi Pono and its objective is to transition as much of the former sugarcane land as possible to diversified agriculture. Under the Proposed Action, the utilization of waters delivered from the EMI Aqueduct System will be an essential element to

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the success of any such diversified agricultural pursuits in Central Maui. Hence, without the water, Mahi Pono will be able to achieve this objective.

Comment 3: *They claimed in their 2,700 page draft that the people and the environment would not be affected by the disappearance of our water. They have not provided any evidence that supports their claim. However there is plenty of evidence from years of desolation when A&B (Alexander & Baldwin), Mahi Pono's predecessor, had diverted away the water. This is Hawai'i where "Ola I ka Wai." Our water is our life! Despite several claims, our delicate eco-system has been severely un-balanced and is threatened once more to say goodbye to a group of already endangered species. not only will Nature suffer but also those who depend on the rivers and the ocean to feed there families.*

Response 3: We acknowledge your comments. However, please note that nowhere in the Draft EIS is it state that environment or people would not be affected by the Proposed Action. Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it

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relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown in pages 4-331 to 4-336.

With regards to endangered species, it is noted in Appendix C that that low-elevation portions of the License Area are already highly impacted by invasive plants. However, it is noted in Appendix C that high-elevation portions of the License Area are predominately dominated by native species and is very likely to contain habitat for several endangered or threatened species. Impacts related to flora and fauna as a result of the Proposed Action are discussed in Section 4.4 of the EIS. Please note that Section 4.4.1 and Section 4.4.2 have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Comment 4: *This company has made a statement saying that there will be no impact on the environment when they divert all of the water. They are wrong. There are many different species that exist only in their fresh water habitat. Let me first explain the different areas within a river. There is "Ki'u Wai," the pool area where it is deep with little movement. There is "Wai Ko'ie'ie," the run where the water moves swiftly. "Kahena Hulili," the rifle is where the water is shallow but also fast moving. The "Wailele" or the waterfall is when water will fall vertically before continuing downstream. All of these which connect down to the "Muliwai" or the estuary. This is where the river connects to the ocean producing a salt/fresh water mix. Now within each*

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Response 4: Please note that nowhere is it stated that there will be no impacts if stream water is diverted. Please note that the HSHEP model in Appendix A estimates streamflow at all diversion locations based on watershed and rainfall characteristics and analyzes each reasonable alternative on stream flow in Section 3.4.3 and Section 4.2.1 of the Draft EIS. The combination of the lower and upper bounds used for the HSHEP model in Appendix A, provide the range at which we

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would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as by definition the changes must fall somewhere between 100% diversion and 0% diversion.

The two scenarios presented in Appendix A of the Draft EIS, the Proposed Action compliant with the CWRM D&O (Trutta Environmental Solutions' 2018 IIFS scenario) and No Action Alternative (30% remaining flow diversion) are examples of how different flow restoration scenarios result in different amounts of habitat restored. The HSHEP model is used to quantify these differences based on flow restoration changes at specific diversions.

As discussed in Section 3.4.3 of the Draft EIS, the HSHEP model requires specific diversion conditions at each diversion. Applying the model to the Reduced Water Volume alternative would require information regarding where stream flows are proposed to be increased over the Proposed Action and the amounts. Given such information, the HSHEP model is able to readily calculate the number of remaining Habitat Units (HU) in any given scenario. The appendices contained within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report (Appendix A of the EIS) provides the necessary data to form a scenario that the HSHEP model can use to analyze and quantify the changes that occur. Hence, the HSHEP model and the appendices within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report provides data that can assist decision makers understand how impacts could change across different diversions scenarios.

Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown in pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text in pages 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd)

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diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See pages 4-61 to 4-62 of the Final EIS.

With regards to ‘o‘opu, hīhīwai, and ‘ōpae, please note that the HSHEP model included the report in Appendix A which is summarized in Section 4.2.1 of the EIS found that under the Proposed Action the habitat for species such as ‘ōpae, ‘o‘opu, and hīhīwai would increase from what was available under historic diversion rates.

Comment 5: *Another thing to worry about is the cultural loss that the Community will feel. As I have previously mentioned, all of these river creatures are rare delicacy. Although I have not mentioned the effects on the ocean life under the circumstances, let’s not forget about the effects that further support my resounding disapproval. One main food source from the ocean is the ‘Akule fish. Since the return of the water after the closure of the Sugar Mill, there has been a bounty of ‘Akule. The communities often come together when the fishing boats get back and work side by side to remove the fishes from the net. By the time the nets are cleared, the fish is then equally separated and passed out for each family who stayed to help. This interaction helps to bring together the community while keeping our Cultural traditions alive.*

Response 5: With regards to cultural impacts, Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to ‘ōpae, ‘o‘opu, pūpūlo‘i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Honopou (Puniawa Tributary), Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au,

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Waiokamilo, Wailuānui (Waikani Waterfall), Kopili‘ula, Pa‘akea, Kapā‘ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua‘aka‘a Tributary, and Waia‘aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo‘i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili‘ula, Pua‘aka‘a, Pa‘akea, Waia‘aka, Kapā‘ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared

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for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Please note that many people at the EISPN public scoping meetings on February 22nd and 23rd, 2017 testified noting positive impacts seen from increased stream flow resulting from the cessation of sugar operations, please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See pages 4-239 to 4-252 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane

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operations in 2016 due to less stream water being diverted. This is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSHEP model estimated that approximately 79.8% of total HU would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected under the No Action alternative.

However, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

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The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83 of the Final EIS.

Comment 6: *Another tradition that needs to also be upheld is the gathering of 'Opae and O'opu. The taste for these river delicacies have been passed down through our generations. Now without the water, we will lose this food source forever. They will not reappear after 30 years.*

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Response 6: We acknowledge your comments. As noted in Response #4 above, please note that the HSheP model included the report in Appendix A which is summarized in Section 4.2.1 of the EIS found that under the Proposed Action the habitat for species such as ‘ōpae, ‘o‘opu, and hīhīwai would increase from what was available under historic diversion rates.

Comment 7: *Another issue included in the Draft Lease was the clause that allows private property to be accessed without permission to get to the river. This is a violation of rights. There is no way this should be allowed. Neither should they be able to divert from anyone’s property either.*

Response 7: Please note that there is nothing in the Draft EIS that has a clause allowing for access into private property. The EIS is an environmental disclosure document and does not authorize or mandate anything. Please note that the Water Lease is assumed to be drafted after the EIS process has commenced.

Comment 8: *A disturbing fact that Mahi Pono did not mention in inkling about saving any water for The Department of Hawaiian Homelands. How is residency being devoid of living water, not a cultural impact?*

Response 8: We respectfully disagree with your comment. Specific information regarding the Department of Hawaiian Home Lands’ (DHHL) future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL’s Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes

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Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown in pages 2-4 to 2-7 of the Final EIS. As explained in pages 2-4 to 2-7 of the Final EIS, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water, CWRM could act on a reservation request related to a proposed lease.

As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the Department of Land and Natural Resources' (DLNR) Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

While Mahi Pono's current farm plan assumes the full use of the water that can be diverted from East Maui streams after compliance with the CWRM D&O, Mahi Pono will be obligated to reduce elements of its farm plan, and thus the availability of crop, to accommodate the permanent reduction in available water resulting from DHHL's allocation. The Reduced Water Volume alternative described in Chapter 3 of the EIS provides an assessment of the impacts of less water being made available for the Proposed Action, including Maui Pono farm plan in the Central Maui agricultural fields. Specifically, consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

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You are correct that Section 2.1.1 of the Draft EIS stated, with respect to the DHHL reservation, that "*Until that reservation is physically claimed, however, it will be available for use by the lessee.*" That statement has been clarified in the Final EIS as shown in pages 2-4 to 2-7 of the Final EIS, as it is uncertain whether the DHHL reservation amount would be available to the lessee until such time as it is needed by DHHL. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

Please note that as discussed in Section 2.1.2 of the Draft EIS, under the Proposed Action, at full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd will be diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Comment 9: *They also falsified that if not granted the lease, Upcountry Maui would not get water. How do false facts lure an entire State into trusting that this company will have our well-being in mind? This is not the kind of company that I would trust to have absolute control of our water for 30 years.*

Response 9: Please note that the source of surface water for MDWS to serve Upcountry Maui comes either directly from the EMI Aqueduct System or from land owned by EMI. The MDWS' right to access this source on a long-term basis is contingent upon the issuance of the Water Lease. As discussed in Section 3.3 of the Draft EIS:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS. At this point in time, it is unknown whether sufficient groundwater resources exist in Upcountry Maui to meet these water demands. It is anticipated that the development of alternative water-source infrastructure would be prohibitively expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment.

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Comment 10: *I implore to the State, to BLNR, to anyone who has a position of power, to not allow this to happen. I know one letter wont make a difference but maybe my letter will spark ideas which would better protect the East Maui Water from abuse. I have a suggestion of creating a Board of the Waters of Nahiku, Ke'anae, Honomanu and Huelo Ahupua'a. Each community will elect one spokesperson to sit on the board to represent their communities ideas. This Board of community members would be ideal to make any decisions concerning the water because their very likelihood depends on it. This way the public would be able to control who and where the water is going and how much to divert without any harm. The rights to our water should not be sold for the sole purpose of profit.*

Response 10: We acknowledge your comments. Please note that the terms and conditions of the Water Lease are at the discretion of the BLNR. Should the BLNR make this a term of the Water Lease, the lessee will comply with those terms and conditions.

Comment 11: *The State defines water as a “ Public Trust.” For Hawai'i's Water Resources to be controlled and regulated for the benefits of it's people. That does not mean to sell ownership to a company that was only created because of the want to buy land and water.*

Response 11: Regarding your comment about the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

Comment 12: *They claim to be a farming company but have done little farming since their random poor into existence. Why isn't there rules that a company needs to be in business for a minimum of 5 years before applying with something as drastic as a 2,700 page draft asking for 30 years of control. Why make it so easy for a brand new company with big pockets and bad intentions to buy their way into power.*

Response 12: We respectfully disagree with your comment. Please note that Mahi Pono has been farming the Central Maui agricultural fields since they were sold A&B's former sugarcane land in December 2018 and has been expanding their agricultural operations since then. It is acknowledged that Mahi Pono is new entity that has just been recently formed with the goal of

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operating a large diversified agriculture farm in Hawai'i. However, in its first 18 months of existence, Mahi Pono has hired over 200 workers from Maui, most of whom have farm experience on the island. In addition, Mahi Pono's management has significant experience cultivating diverse crops on more than 100,000 acres on the continental U.S. Also, the company has established market channels, and substantial financial resources. The Mahi Pono farm plan is discussed not only in the Executive Summary, but in detail in Section 2.1.4. and Section 4.7.4, as well as Appendix I. Water requirements for 2030 are discussed in Subsection 9.a of Appendix I, with details provided in Table 3, Section 3.a of Appendix I. This table includes average daily per-acre water requirements by crop. Production figures are discussed in Subsection 10.a, with details provided in Table 4, Section 4.a of Appendix I.

The Mahi Pono farm plan will evolve over time based on a number of factors, including the available supply of surface water, experience which will be gained on crops that grow well in Central Maui, crops that are profitable, the size of the market for profitable crops, etc.

Comment 13: *Another requirement should be for the drafting company to give the public enough time to thoroughly inspect their proposed document.*

Response 13: Please note that it is not within the EIS preparer's purview to decide the length of time for public comments. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 14: *The last and final request from me is that the BLNR prepare their own draft and have a public auction. This way the BLNR can control the terms. All the while the public can be fully aware of the details concerning our water.*

Response 14: Please note that BLNR determined that A&B was to prepare the EIS for the proposed Water Lease. As explained in Section 1.4 of the Draft EIS, in connection with A&B's May 2001 submittal to the BLNR requesting that the BLNR offer a long-term (30 year) water lease at public auction, A&B offered to perform the associated HRS, Chapter 343 environmental review. As part of the contested case hearing on the proposed Water Lease, NHLC, on behalf of Nā Moku, objected to A&B undertaking the environmental review process, and asserted that the BLNR was required to prepare conduct the environmental review. NHLC later orally withdrew its objection during oral arguments before the BLNR in May 2015. BLNR issued an order on April 14, 2016, directing A&B to scope the EIS, including the identification of the portions of the EIS that could proceed prior to the CWRM issuing a final IIFS decision, and those portions which could not. That scope was filed with the BLNR in June 2016. On July 8, 2016, the BLNR approved the scope and instructed that "A&B and EMI should proceed with the preparation of an

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environmental impact statement (EIS) in as expeditious manner as possible.” The EIS recites this history in Section 1.3.3 of the Draft EIS and recognizes that the Water Lease will be awarded by public auction.

Comment 15: *Everything I have presented would be a better solution. There is no benefits except for the pockets of Mahi Pono. Why not deny them their lease? There will be no extinction of any stream or ocean life. If the lease is denied, A&B will still have to rebate Mahi Pono approximately \$31 million dollars. This solidifies the fact that Mahi Pono’s only interest is power and money.*

Response 15: We acknowledge your comments. However, please note that impacts of the No Action alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories.

Comment 16: *That is why I’m writing. I’m tired of our island and culture suffering because of greed and money. Above all else should come self-preservation to ensure the safety to uphold our culture, to preserve our Endemic creatures and for the safe-keeping of our people. Since when is “money” more important than culture? I plead with whoever this letter reaches to not give Mahi Pono any power over anything. Deny their request for the sake of our stream life. Let them collect from A&B and let our streams, our creatures and our people thrive! Stop this before it is too late to fight for our water back. Do not let Mahi Pono and their private California Lawyer the satisfaction. Stand by our island and its Natives.*

I hope this letter provides enough insights into why this lease is unacceptable. I do hope that my ideas will be considered at least. In my sincerity, I do hope my letter will make a difference. Do not turn your backs on us.”

Response 16: We acknowledge your comments and appreciate your participation in this EIS process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC’s website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Charlotte OBrien <charobrien@gmail.com>
Sent: Thursday, November 7, 2019 10:37 AM
To: Public Comment; ian.c.hirokawa@hawaii.gov
Cc: Char O'Brien
Subject: Questions for East Maui Water Lease EIS
Attachments: Charlotte OBrien Response Letter.pdf

Dear Mr. Okamoto and Mr. Hirokawa,

I respectfully submit the enclosed PDF of Questions for the East Maui Water Lease EIS. Please acknowledge receipt of these questions.

Sincerely,

Charlotte O'Brien

From: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Sent: Thursday, November 7, 2019 11:22 AM
To: Charlotte OBrien; Public Comment
Subject: RE: Questions for East Maui Water Lease EIS

Dear Ms. O'Brien

Confirming receipt. Please note that the attachment I received is a response letter dated September 23, 2019 from Wilson Okamoto Corporation to yourself. Is that what you intend to submit?

Thank you
Ian Hirokawa

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

From: Charlotte OBrien <charobrien@gmail.com>
Sent: Thursday, November 7, 2019 10:37 AM
To: waterleaseeis@wilsonokamoto.com; Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Cc: Char O'Brien <charobrien@gmail.com>
Subject: Questions for East Maui Water Lease EIS

Dear Mr. Okamoto and Mr. Hirokawa,

I respectfully submit the enclosed PDF of Questions for the East Maui Water Lease EIS. Please acknowledge receipt of these questions.

Sincerely,

Charlotte O'Brien

**Subject: Follow up questions regarding East Maui Water Lease Draft-EIS
Proposed Water Lease for the Nahiku, Ke'anae, Honomano, + Huelo License Areas**

From: Charlotte O'Brien, 500 Ho'olawa Road, Haiku, HI 96708

To: Mr. Earl Matsukawa AICP, waterleaseeis@wilsonokamoto.com (808) 946-2277,
1907 S. Beretania Street, Suite 400, Honolulu, HI 96826

To: Mr. Ian Hirokawa, ian.c.hirokawa@hawaii.gov
And Suzanne Case, Chairperson, Hawai'i DLNR
151 Punchbowl Street, Honolulu, Hawai'i 96813

Huelo, Hawaii November 7, 2019

Thank you for allowing public comment on this Draft EIS. I am responding as a long-time resident of Huelo and an agronomist. I received a BS in Agronomy with High Honors from Michigan State University, took an additional 2 years of technical training in Scandinavia and Austria, farmed in the Mid-West for 25 years and worked with farmers in the tropics of Viet Nam. About 10 years ago I began an earnest study of climate change and Regenerative Agriculture as:

1. a solution to the carbon loss created by industrial agriculture
2. a mitigation mechanism to the extremes in climate that have begun.

I understand too well the threats of climate change to the lives of my three Hawaiian born grandchildren. I believe that we all owe it to future generations to do our best to protect them with the actions we take today. It is from this background that I respectfully ask you to include answers to the following questions in the final EIS regarding a 30-year water lease to a private company. We live on an island and I am not trying to demonize Mahi Pono – I am simply trying to look out for the public good.

Questions concerning Agricultural Best Practices

1. In the DEIS it is repeatedly stated that Mahi Pono will use best management practices BMP for their agriculture, yet they are using excessive tillage and laying thousands of acres bare in the Central Valley. This violates the two most important principals of Regenerative Agriculture as well as the two most important practices declared by the United Nations IPCC as BMP for mitigating climate change
 - Never use excessive tillage because it destroys soil structure, cuts Mycorrhizal fungi hyphae that protect the soil from erosion and collapses the pores that allow for good drainage and air infiltration

- Never allow soil (particularly in the tropics or sub tropics) to lie bare in the sun as it destroys microbial life and releases soil sequestered carbon

So my question is how is leaving thousands of acres bare and subject to wind and water erosion considered BMP? (Please note that the Bayer agricultural managers do not allow bare ground in their operation in Kihei specifically to protect the reef).

2. Although Mahi Pono won public support when they said that they would be farming organically if not regeneratively, it is obvious from the way that they are approaching their soil preparation that they will be using fertilizers and pesticides and that these petro-chemicals will be entering our near-shore ocean. The DEIS was inadequate in revealing the amount and types of fertilizers and pesticides they intend to use and the effect these chemicals will have on our near-shore reefs.
3. It has been proven that each 1% increase in soil organic matter increases the soils water holding capacity by an average of 25,000 gals per acre and an increase in the Central Valley of at least 5% organic matter should be achievable allowing an additional 125,000 gals of water to become stored in the soil and plant available per acre. The DEIS did not include how Mahi Pono intends to address the building of soil carbon as a response to climate change and as a water conserving mechanism.
4. Given that modern systems of buried irrigation can reduce water consumption by 25% with a reasonable ROI the DEIS did not include Mahi Pono's plan for using water conserving irrigating systems. The DEIS did not explain how if given a lease for water from State lands that it will be respectfully used and not squandered.
5. Given that the easiest way to increase available water on the island is to build additional reservoirs that collect the excessive rainfalls that are predicted to increase with climate change, the DEIS did not include Mahi Pono's plans for increasing the catchment possible through additional reservoirs.
6. Given that the DEIS repeats a concern attributed to the State BLNR that "wind-blown erosion will damage the near shore marine environment, air quality and tourism competitiveness" the DEIS did not include a plan for mitigating these forces. In fact, the photo in the Maui News on Nov 5, 2019 proves that Mahi Pono is not following BMP in regard to the safety of our reefs. The photo showed fields of bare ground with papayas being planted that will never provide ground cover.
7. The DEIS states in several places that the soil of the Central Valley is of excellent quality for agricultural production. According to a report by the scientists of Applied Ecological Services – one of the top ecological consultants in the world - only 12,000 acres out of the 36,000 acres farmed by HC and S is worthy of future diversified agriculture. The

study made a comparison of the soils types, soil depth, slope direction, evapo-transpiration rates, annual rainfall, temperatures, etc. to make its determinations. The DEIS did not explain why the Central Valley is considered to have excellent growing conditions while taking in all of these considerations. It simply stated an unsupported opinion. (The AES report can be made available if desired.)

8. The DEIS did not adequately include how the use of this water will increase not only local food production (as that can be exported) but how the use of this public water will increase food for local consumption. I have read the section on agriculture but putting numbers in a chart and then talking about different scenarios with those numbers does not adequately answer this question. In order for the public to truly comment on the DEIS we need more information on the plans and methods intended for use in the Central Valley.
9. The DEIS is not adequate because it does not provide specific data on water needs per acre per day for each crop that Mahi Pono is planning to grow.
10. The DEIS is not adequate because it does not provide specific data on the names and volumes of pesticides, herbicides, fungicides and petro-chemical fertilizers that Mahi Pono intends to use.

Questions concerning the ditch system and water use

11. Given that much of the irrigation water costs \$1500 per Acre Foot in California
 - 43,560 square feet per acre
 - One foot deep = 43,560 cubic feet = one-acre foot
 - One cubic foot = 7.48 gals of water
 - $43,560 * 7.48 = 325,828$ gals per Acre Foot
 - Equals roughly 326 thousand gals / acre foot (the unit by which water is sold in Hawaii)
 - $\$1500 / 326 = \$4.60 /$ thousand gals of water
 - The historical cost of public water to A and B was \$0.003/thousand gals
 - $\$4.60 / \$0.003 =$ over 1500 times less than the cost of water in California

The DEIS was inadequate because it did not include an explanation of why A and B and their affiliates should continue to pay so very little to the State for the use of this public asset.
12. The DEIS did not adequately address how native Hawaiians will benefit from the sale of public waters as is mandated in the State constitution.
13. The DEIS did not include an explanation of why the State of Hawaii should lease this public asset at a price that is a fraction of the fair market value rather than setting a

price that allows monies to be paid to the Hawaiians as is mandated by the Hawaiian Constitution.

14. During the June 7th, 2018 East Maui H2O Roundtable the experts from A and B declared to the group assembled that the water loss in the tunnels could not be measured. They said they had no idea of what seeped out of tunnels and was lost from the system. They deferred to a national average of all plumbing systems residential and commercial as 22.5% loss and used that in their calculations. At the same meeting were scientists from the USGS showing their Open File Report 2012-1115 *Measurements of Seepage Losses and Gains East Maui Irrigation Diversion System, Maui, Hawaii* done in 2012. This publicly available 23-page document is very explicit as to where the EMI ditch system is leaking. The DEIS did not include an explanation of where the leaks are and what will be done to maximize the efficiency of the system.
15. Given that with today's technology it is possible to remotely open and close diversions the DEIS did not include the reason that such a mechanism should not be mandated.
16. Given that with today's technology there are diversions that first feed the stream and then divert the excess water to the Central Valley the DEIS did not explain why this would not be the preferable method of diversion as it feeds the stream first and sends the excess to the Central Valley.
17. The DEIS did not include a list of technologies and contractors being considered for use in repairing the EMI system. It is true that fixing the tunnels seems problematic but with today's polymers that can be sprayed in 360 degrees by a traveling robot these tunnels can and should be repaired in exchange for a lease with favorable conditions.
18. Given that one of the biggest concerns with climate change is mosquito spread disease like Dengue Fever and Sleeping Sickness the DEIS did not address how Mahi Pono will prevent stagnant water around their diversions.

Questions concerning public oversight and liability

19. Given that this is a 2700 page document the DEIS did not include the names, titles and email addresses of all of those state officials that have fully read and digested this material on the behalf of the public interest
20. Since roughly 70% of the ditch system was built on State Land and is therefore owned by the State since the 1930s, the DEIS did not include the standards to which the ditch system on public lands must be restored and maintained as a part of the lease.
21. The DEIS did not include

- What will be the method of overseeing the use of these public trust waters , the health of the watershed and the maintenance of the State-owned ditch system?
 - What will be the consequences of mismanagement?
 - What is the legal structure to enforce such consequences?
 - How much will this monitoring cost the tax payers?
 - Will the lease monies cover this cost?
22. As stated above the use of excessive tillage and the lack of cover crops leaves the soil not only open to wind and water erosion but makes it a tremendous threat to our near shore reef health. Should we get 3 to 4 inches of rain in a single storm the silting that is inevitable on our precious reefs would be disastrous. The DEIS did not discuss how State agencies will protect the island of Maui from such a logical end? Will conservation practices be mandated as a stipulation for the lease?
23. The DEIS did not include an explanation of why a system of public auction should be used to place the value on this water as it is impossible for any other entity to compete without owning large sections of land making an auction not in the public interest.
24. The DEIS did not explain why a fair market value is not set for this public asset and then offered for lease at a fair rate (adjustable for inflation) as would be in the public interest.
25. There have been countless wild fires in the Central Valley this summer and the County of Maui has had to take responsibility for fighting them. When A and B owned the land I never saw a fire in the Central Valley and as I understand it they used a variety of three inter-related methods of dealing with brush fires:
- They maintained a fire truck on property
 - They maintained firebreaks
 - They kept certain reservoirs full of water and had a system for the emergency use of that water to squelch fires immediately
- The DEIS did not explain why the new land owner is not being responsible for fires on their land? What is their responsibility for containing fires on their land or reimbursing the County of Maui for fighting them?
26. The DEIS did not provide the policy number and amount of liability insurance that Mahi Pono carries to protect the public when one of the Central Valley fires causes property damage.
27. The DEIS did not spell out the process of applying for a lease for public waters so that other entities could also enter the public auction.

28. Many Maui residents fear housing development dependent on the use of agricultural water as is routinely done in California. The DEIS did not explain the mechanism for preventing the use of agricultural water for housing development.

Questions concerning the impact on Hawaiian Cultural Practices and Natural Resources

29. The DEIS did not include the amount of money that the State agencies spend protecting the reefs that are of utmost value to the Hawaiian culture.
30. Given that the Hawaiian culture is dependent on healthy reefs and that fertilizer run-off, wind-blown particulate matter and soil erosion from excessive rain are all extremely detrimental to the health of a reef the DEIS did not explain how this lease will protect our reefs. If Mahi Pono is enabled to continue practices that are known to hurt our reefs at the same time that the State spends millions of dollars to protect them then the State is working against itself. This was not addressed in the DEIS.
31. Given that in the past A&B did not protect the ditch system watershed from invasive species and thereby harmed State lands that are meant to support Hawaiian Cultural practices – the DEIS did not address how will this change under the leadership of Mahi Pono?
32. Given that the investment money from the Canadian pension fund is meant to support an ESG investment the DEIS did not address how will this lease further environmental, social and community good?

Thank you for your attention to detail on this very important public matter. I am not opposed to water being given to an entity that actually provides food for our local population while also improving the eco-systems of Maui. This project is an ESG investment for the Canadian pension fund which makes it mandatory that the project does social, environmental and social good. It is possible to make a profit while also benefiting the earth and its inhabitants. For the State to allow less is to neglect its responsibility to look out for the common good in this environment of the multiple threats of climate change.

Respectfully Yours,
Charlotte O'Brien
808 344 5339



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September 3, 2021

Ms. Charlotte O'Brien
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Haiku, HI 96708
charobrien@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Ms. O'Brien:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements as prescribed in Hawai'i Administrative Rules, Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Thank you for allowing public comment on this Draft EIS. I am responding as a long-time resident of Huelo and an agronomist. I received a BS in Agronomy with High Honors from Michigan State University, took an additional 2 years of technical training in Scandinavia and Austria, farmed in the Mid-West for 25 years and worked with farmers in the tropics of Viet Nam. About 10 years ago I began an earnest study of climate change and Regenerative Agriculture as:*

- 1. a solution to the carbon loss created by industrial agriculture*
- 2. a mitigation mechanism to the extremes in climate that have begun.*

I understand too well the threats of climate change to the lives of my three Hawaiian born grandchildren. I believe that we all owe it to future generations to do our best to protect them with the actions we take today. It is from this background that I respectfully ask you to include answers to the following questions in the final EIS regarding a 30-year water lease to a private company. We live on an island and I am not trying to demonize Mahi Pono – I am simply trying to look out for the public good.

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Response 1: We acknowledge your comments regarding your professional and personal background. Public comments are a required component of the EIS process.

Comment 2: Questions concerning Agricultural Best Practices

In the DEIS it is repeatedly stated that Mahi Pono will use best management practices BMP for their agriculture, yet they are using excessive tillage and laying thousands of acres bare in the Central Valley. This violates the two most important principals of Regenerative Agriculture as well as the two most important practices declared by the United Nations IPCC as BMP for mitigating climate change

- *Never use excessive tillage because it destroys soil structure, cuts Mycorrhizal fungi hyphae that protect the soil from erosion and collapses the pores that allow for good drainage and air infiltration*
- *Never allow soil (particularly in the tropics or sub tropics) to lie bare in the sun as it destroys microbial life and releases soil sequestered carbon*

So my question is how is leaving thousands of acres bare and subject to wind and water erosion considered BMP? (Please note that the Bayer agricultural managers do not allow bare ground in their operation in Kihei specifically to protect the reef).

Response 2: As a matter of context for our responses, it should be noted that the primary Proposed Action, which triggered the requirement to prepare an EIS, is the proposed lease of waters arising from State-owned lands. As explained in Section 2.1 of the Draft EIS:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the “right, privilege, and authority to enter and go upon” the Lease Area for the “purposes of developing, diverting, transporting, and using government owned waters” through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users.

The Central Maui agricultural fields are not State lands. The Central Maui agricultural fields are privately owned and have been under agricultural cultivation for approximately 100 years. Mahi Pono began farming these lands in 2019.

It is inaccurate to characterize Mahi Pono as having laid "thousands of acres bare in the Central Valley." While we concur that excessive tilling and allowing soil to "lie bare in the sun" for excessive periods of time destroys microbial life, Mahi Pono only clears sufficient acreage in anticipation of, and in preparation for, planned plantings by plowing fields, turning the soil, and incorporating soil amendments (i.e., compost). At the time of writing this response, there is over

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a thousand acres that have been prepared for planting. Ideally, those prepared fields are planted soon after they are prepared. There may be short delays due to the timing at which plants are ready to be transplanted, but it is not Mahi Pono's practice to prepare fields that would not be planted within a month's time.

Wildfires have burned thousands of acres in the Central Maui agricultural fields and those fields may look bare, but that is not due to an agricultural practice of Mahi Pono's. The Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff associated with their current farming activities. As Mahi Pono incrementally increases the amount of farmed acreage over time and crops are planted (particularly the permanent orchard crops), ground disturbance will again be limited, as appropriate and consistent with farming BMPs.

Moreover, as Mahi Pono incrementally increases the amount of farmed acreage over time and crops are planted (particularly the permanent orchard crops), ground disturbance will be again be limited, as appropriate and consistent with farming BMPs. Towards this end, Mahi Pono has implemented several water saving strategies for the Central Maui agricultural fields and continues to evaluate additional methods, some of which are consistent with the specific measures you recited. Mahi Pono water saving strategies include the following:

- Planting windbreaks in the fields.
- Incorporating significant uses of weed mat along plant lines, which will reduce evapotranspiration and erosion.
- Mowing rather than plowing inter-rows to preserve organic matter and keep cover to prevent soil erosion.
- Operating within the terms of a Conservation Plan from NRCS, which includes swales and diversions for erosion protection,
- Practicing rotational grazing of livestock.
- Planting permanent tree crops that will develop canopies that will assist with soil moisture retention and reduce evapotranspiration.

Comment 3: *Although Mahi Pono won public support when they said that they would be farming organically if not regeneratively, it is obvious from the way that they are approaching their soil preparation that they will be using fertilizers and pesticides and that these petrochemicals will be entering our near-shore ocean. The DEIS was inadequate in revealing the amount and types of fertilizers and pesticides they intend to use and the effect these chemicals will have on our near-shore reefs.*

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Response 3: Please note that Mahi Pono did not make any claim that it intended to operate an organic farm. Mahi Pono intends to use a limited amount of fertilizers and pesticides in accordance with all laws and regulations and only on an as-needed basis. As described in Section 2.1.4 of the Draft EIS, Mahi Pono's goals for its diversified farm plan will be guided by its core principles of using reasonable and environmentally responsible BMPs, planting non-GMO crops, and growing food for local consumption. In addition, since January 2020, Mahi Pono has also committed to foregoing the use of Round-Up and other glyphosate-based products within the Central Maui agricultural fields. This commitment is reflected in Section 4.12 of the Final EIS as shown in pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations. Mahi Pono's use of fertilizers and pesticides will follow BMPs approved by the State of Hawai'i DOH, the U.S. NRCS, the U.S. EPA, the State of Hawai'i Department of Agriculture (DOA) and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff. The State of Hawai'i DOA's Pesticide Branch also provides regulatory oversight over Mahi Pono's pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. In addition, Act 45, which was passed by the 2018 Hawai'i Legislature and effective January 1, 2019, required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. Please also see Response #11 below for more information on this topic.

Comment 4: *It has been proven that each 1% increase in soil organic matter increases the soils water holding capacity by an average of 25,000 gals per acre and an increase in the Central Valley of at least 5% organic matter should be achievable allowing an additional 125,000 gals of water to become stored in the soil and plant available per acre. The DEIS did not include how Mahi Pono intends to address the building of soil carbon as a response to climate change and as a water conserving mechanism.*

Response 4: In general, we acknowledge that increasing soil organic matter increases its water holding capacity; however, we question whether your water storage calculations can be generalized for the existing soil conditions in the former sugarcane fields and Mahi Pono's farm plan for those fields. As previously stated, Mahi Pono will only clear land in anticipation of, and in preparation for, planned planting by plowing fields, turning the soil, and incorporating soil amendments (i.e., compost). The specifics of field preparation will be determined by the crop to be planted and other factors. Since the success of the farm plan will be largely dependent upon the amount of water available to bring it into fruition, water conservation by building soil carbon is an important, but not the sole consideration for Mahi Pono.

We also concur that carbon building in soils, if practiced on a large enough scale worldwide, could affect the rate of climate change. Moreover, while any effort to increase soil carbon could

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be considered a contribution toward slowing climate change, Mahi Pono's potential contribution on a worldwide scale would be incremental and negligible, at best.

Mahi Pono's plans for improving irrigation efficiency is stated throughout Chapter 5 of the Draft EIS. Mahi Pono expects to invest over \$20 million to increase the efficiency of its private Central Maui Field Irrigation System in Central Maui (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields).

As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. These new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Reducing water usage through effective irrigation ensures conservation of Hawai'i's natural resources. Please note that this information has been added to Section 2.1.4 of the Final EIS, as shown in page 2-29, as well as other sections when discussed.

Comment 5: *Given that modern systems of buried irrigation can reduce water consumption by 25% with a reasonable ROI the DEIS did not include Mahi Pono's plan for using water conserving irrigating systems. The DEIS did not explain how if given a lease for water from State lands that it will be respectfully used and not squandered.*

Response 5: While we acknowledge that buried irrigation can reduce water consumption, committing to one method of irrigation for an entire diversified farm plan would not necessarily optimize water conservation, crop productivity or cost effectiveness. Mahi Pono's plans for improving irrigation efficiency is repeatedly stated throughout Chapter 5 of the Draft EIS and in Response #4 above.

Regarding the EMI Aqueduct System, it is highly efficient. On the whole, the EMI Aqueduct System does not lose water over the entire length of the system, up to its terminus at Kamole-Weir. It is not until the EMI Aqueduct System transitions into the Central Maui Field Irrigation System used in the Central Maui agricultural fields that there starts to be losses due to seepage because its agricultural ditches and reservoirs are open and are not lined. Please note that this clarification has been made throughout the Final EIS as shown in pages 2-11, 2-27, 3-12, and 4-76. However, as discussed in Response #4, Mahi Pono will be making improvements to the Central Maui Field Irrigation System, which will enhance the efficiency and conservation of the use of irrigation water in the Central Maui agricultural fields.

In any event, the amount of water that can be diverted under the Water Lease is limited by the flow amounts permitted under the Commission on Water Resources Management (CWRM)

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Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O). Under the CWRM D&O, flows were restored to numerous streams in East Maui, as discussed in more detail in Section 1.3.4 of the EIS. We also assume that the Water Lease, if issued, will require compliance with appropriate mitigation measures identified in the EIS. However, the terms of the Water Lease are at the discretion of the Board of Land and Natural Resources (BLNR) and would have to be agreed to by the lessee.

Comment 6: *Given that the easiest way to increase available water on the island is to build additional reservoirs that collect the excessive rainfalls that are predicted to increase with climate change, the DEIS did not include Mahi Pono's plans for increasing the catchment possible through additional reservoirs.*

Response 6: The Draft EIS discusses the potential "Added Storage Alternative" in Section 3.1.1.3 of the Draft EIS. Specifically, Section 3.1.1.3 of the Draft EIS states:

Currently, the EMI Aqueduct System has eight reservoirs, mostly along the lower ditch systems, and the Central Maui field irrigation system has 48 major reservoirs. The combined storage capacity of these existing reservoirs is approximately 1,344 mg (Akinaka, 2019). Most of these reservoirs, however, have not been used since the closure of sugar in 2016 and others have not been used because they do not meet dam safety requirements. As a result, many will require extensive upgrades to put them back into service. These upgrades could cost between \$50 – 100 million (Akinaka, 2019). Obtaining permits to upgrade and repair these reservoirs will also be challenging due to current dam safety requirements. Assuming that the existing reservoirs can be restored to their full capacity of 1,344 mg, and the amount of flow available for irrigation under the Proposed Action is approximately 92.32 mgd, then the existing reservoirs could provide about 16 days of storage capacity.

The existing reservoirs are fed by the EMI Aqueduct System so they can be filled when the amount of water delivered exceeds the amount used. The EMI Aqueduct System, however, is not designed to capture and convey high-volume freshet flows which overwhelm and bypass the diversions. If such freshet flows (in excess of the IIFS standards under the CWRM D&O) could be captured, it could significantly increase storage capacity.

If an additional storage volume of 1,200 mg is assumed, an additional two weeks of flow could be provided at the rate of 82.36 mgd. Combined with the storage capacity of the restored and existing reservoirs, a total of about a month of storage would be available, which would provide a substantial supply to weather

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periods of low rainfall during the dry season. Moreover, since captured freshet flows would be used to replenish the restored and existing reservoirs between freshets, the period that stored water could be used could be extended even longer.

A single reservoir of this size (to hold 1,200 mg) could be located upstream of the Koolau Ditch within Hānawī Gulch. This area is preferable for the location of a reservoir to capture and store water because of its elevation and rainfall. The reservoir would be created by damming a ravine above the ditch so it can be fed by gravity flow and allow streamflow to continue in compliance with the CWRM D&O. Based on a rough estimate, a reservoir of this size would encompass about 30 acres with a 4,000 foot long dam structure standing approximately 150 tall at its highest point. (Akinaka, 2019). Construction of such a reservoir would be in the order of some \$300 million. (Akinaka, 2019). Dams are uniquely engineered structures that require knowledge and experience in dam safety, particularly how to safely handle water flows in and out of the structure through appurtenant features, as well as mitigating the hazards of water passing through the dam embankment itself (seepage). Dams sustain high hydrostatic water loads, which can result in failure of the embankment if they are not properly designed. (DLNR, The Hawai'i Dam and Reservoir Safety Program, FY 2017). It is very unlikely such a reservoir could be constructed as its environmental impacts would be considerable in terms of impacts to views and public safety concerns.

Hence, reservoirs could add potential water storage by capturing excessive flows. However, please note that the above discussion has been revised to more accurately describe the reservoirs associated with the EMI Aqueduct System and the Central Maui Field Irrigation System as shown in pages 3-11 to 3-14. Further, please note that neither the Applicant nor Mahi Pono is currently proposing to construct additional reservoirs to the current system as part of the Proposed Action as they are costly, complex to site, design and construct, and there are associated environmental impacts of constructing additional reservoirs.

Mahi Pono expects to invest money to improve its private Central Maui Field Irrigation System to increase the efficiency of its water use as discussed in Response #4 above. This investment should improve the overall delivery system and usage of the existing reservoirs. Rather than water flowing continuously throughout the agricultural fields, water will be delivered when needed, and stored in the existing reservoirs when additional water is available.

Comment 7: *Given that the DEIS repeats a concern attributed to the State BLNR that “wind-blown erosion will damage the near shore marine environment, air quality and tourism competitiveness” the DEIS did not include a plan for mitigating these forces. In fact, the photo in*

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the Maui News on Nov 5, 2019 proves that Mahi Pono is not following BMP in regard to the safety of our reefs. The photo showed fields of bare ground with papayas being planted that will never provide ground cover.

Response 7: Presently, Mahi Pono is unable to irrigate the majority of the agricultural fields in Central Maui to provide groundcover due to the water limitations under the terms of its current water revocable permits. Moreover, it will not be able to do so in the future without the proposed Water Lease. This will render lands uncultivated or unused, due to lack of water. As a result, the land in Central Maui will revert to its natural arid condition which is susceptible to wind-blown erosion. The Draft EIS provided a table projecting the Mahi Pono water use for full development of the farm plan. To better explain how much water is available now and expected for the near term for agricultural groundcover, Section 2.1.4 of the Final EIS has been updated with more current water projections as shown in pages 2-30 and 2-32.

However, in order to implement Mahi Pono's full build-out farm plan, approximately 82.33 mgd is needed to irrigate the majority of the approximate 30,000 acres in Central Maui. Hence, as stated within Section 4.2.3 of the Draft EIS related to Coastal Waters, "[no] significant impacts on coastal waters in the region are anticipated as the Proposed Action will reduce wind-blown erosion that could occur if the Central Maui fields were not in cultivation, and which could damage nearshore environments."

Comment 8: *The DEIS states in several places that the soil of the Central Valley is of excellent quality for agricultural production. According to a report by the scientists of Applied Ecological Services – one of the top ecological consultants in the world - only 12,000 acres out of the 36,000 acres farmed by HC and S is worthy of future diversified agriculture. The study made a comparison of the soils types, soil depth, slope direction, evapo-transpiration rates, annual rainfall, temperatures, etc. to make its determinations. The DEIS did not explain why the Central Valley is considered to have excellent growing conditions while taking in all of these considerations. It simply stated an unsupported opinion. (The AES report can be made available if desired.)*

Response 8: As a matter of clarification, the Central Maui agricultural fields addressed by this EIS consists of approximately 30,000 acres, not 36,000 acres. Although we are not certain whether the Applied Ecological Services (AES) study you cite applies to these lands owned by Mahi Pono, the discussions of soils in the Draft EIS were prepared using references widely accepted for an EIS prepared pursuant to Hawai'i Revised Statutes (HRS) Chapter 343 and HAR Title 11, Chapter 200. Section 4.1.2 of the Draft EIS, three soil classification studies were discussed:

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- The U.S. Department of Agriculture (USDA) (2001) Soil Survey Geographic (SSURGO) database and soil survey data gathered by Foote et al. (1972);
- The Hawai'i Land Study Bureau (LSB) Detailed Land Classification, Island of Maui (LSB bulletin no. 7, 1967) and depicted online at the Hawai'i LSB Locator-ARC GIS by the Hawai'i Statewide GIS Program, Office of Planning; and
- The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Classification System, which was developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), and the College of Tropical Agriculture, University of Hawai'i.

Section 4.1.2 of the Draft EIS includes descriptions of these various soil classification systems with regard to agricultural potential in Central Maui. Specifically, Section 4.1.2 of the Draft EIS, with regards to Central Maui, states:

According to the LSB Detailed Land Classification, Island of Maui (1967), the agricultural fields of Central Maui that were previously cultivated in sugarcane have an overall productivity rating of A-Excellent (See Figure 4-15). The southern end of the agricultural fields, which is at the farthest reach of the Central Maui field irrigation system is largely rated E-Very Poor with patches of B-Good. The northeastern end of the agricultural fields west of Maliko Gulch includes land rated C-Fair and D-Poor.

According to the ALISH map, the agricultural fields of Central Maui are predominantly classified Prime Land (See Figure 4-16).

However, Section 4.1.2 of the EIS is not intended to assess their potential for diversified agriculture. Rather, this section of the EIS was intended to discuss impacts of the Proposed Action on soils in the three affected areas (East Maui, Upcountry Maui and Central Maui).

Section 4.7.4 of the Draft EIS includes a discussion summarizing a report by Plasch Econ Pacific LLC on Agricultural and Related Economic Impacts (June 2019). The report assesses the economic agricultural impacts of the Proposed Action and is included as Appendix I in the Draft EIS. In Section 5 of Appendix I of the Draft EIS, the agricultural productivity of the 30,000 acres in Central Maui was discussed based on the soil rating systems of the three aforementioned studies. Although this portion of the report was not summarized in Section 4.7.4 of the Draft EIS, it has been in the Final EIS, as excerpted in pages 4-295 to 4-297.

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As shown in pages 4-295 to 4-297 and as documented in Appendix I of the Draft EIS, the overwhelming majority of the Central Maui agricultural fields are considered to be highly productive with irrigation water. However, with less water available, less acreage would be rated as high-quality farmland.

Hence, as mentioned in Section 4.7.4 of the Draft EIS:

Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

In addition to soil classifications for agricultural lands there are land use regulatory classifications of agricultural lands. The State of Hawai'i Land Use Commission designated approximately 22,000 acres of the 30,000 acres of Central Maui agricultural fields owned by Mahi Pono as Important Agricultural Lands (IAL). The designation of IAL is determined based upon a number of factors, but such lands: (1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology; (2) Contribute to the State's economic base and produce agricultural commodities for export or local consumption; or (3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production. See HRS § 205-42. The objective for the identification of IAL is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations. As such, the Central Maui agricultural fields are highly suitable for agricultural production and uses. We also note, as shown on Figure 5-2 of the Draft EIS, almost all of the Central Maui agricultural fields are designated by the State in the Agricultural District, and is also zoned by the County of Maui in the agricultural zoning district. See EIS Section 5.6 (Maui County Zoning).

Comment 9: *The DEIS did not adequately include how the use of this water will increase not only local food production (as that can be exported) but how the use of this public water will increase food for local consumption. I have read the section on agriculture but putting numbers in a chart and then talking about different scenarios with those numbers does not adequately answer this question. In order for the public to truly comment on the DEIS we need more information on the plans and methods intended for use in the Central Valley.*

Response 9: Unlike the previous monocrop, sugarcane, which was grown in the Central Maui agricultural fields almost entirely for export, the Mahi Pono farm plan is a diversified

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agricultural plan, and a significant portion of agricultural products will be for local consumption. Mahi Pono considers Hawai'i to be its primary market. Local sales are preferred over exports because it saves on overseas shipping costs. Both local sales and exports, however, are beneficial to Hawai'i since local sales that displace imports reduce the financial drain on the State as a whole, while exports generate income for the State. As discussed in Section 6.a. of Appendix I and Section 4.7.4 in the Draft EIS, "*To the extent economically feasible, Mahi Pono and other farmers on its land will grow food crops for the Hawai'i market.*" This discussion in Section 4.7.4 of the EIS has been further clarified as shown on page 4-285.

The potential obstacles to reaching the Hawai'i market were discussed in the Draft EIS in Section 4.7.4):

Farmers in Central Maui are well-situated to supply the small Maui Island market. Compared to other farmers in Hawai'i, they can also compete reasonably well in supplying mainland markets, as long as their crops have long shelf-lives and so can be shipped by surface vessel. However, compared to farmers on O'ahu, they are at a disadvantage in supplying the Honolulu market. Furthermore, they are at a disadvantage in supplying mainland markets if their crops have short shelf-lives and so must be shipped by air. Also, farmers on Maui are at a disadvantage in competing against the low-cost producers who supply mainland markets.

Among other considerations, the Mahi Pono farm plan was developed to address the balance between the primary Hawai'i market and the remaining export market. But, the composition of those crops is only generally described based on present estimates and anticipated build out toward full development. As discussed in Section 2.1.4 of the Draft EIS regarding Mahi Pono's farm plan:

Mahi Pono's farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e. orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation. All of these things must be considered when developing an evolving and feasible diversified agricultural plan for Central Maui.

Another factor in developing the farm plan is to be sensitive to the existing local farming community. Mahi Pono does not want to displace local farmers by planting competing crops or artificially accelerating the ramp-up of operations, both of which could have the potential to drive local farmers out of the market.

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Mahi Pono's goals for its diversified farm plan will be guided by its core principles of using reasonable and environmentally responsible "best management practices", planting non-GMO crops, and growing food for local consumption.

As stated in Section 4.7.4 of the Draft EIS, Mahi Pono expects that, at full development of its farm plan, its local sales, including those of its community farm tenants, will comprise roughly 65% of total sales generated from Central Maui, with exports being 35%.

Moreover, the Mahi Pono farm plan is discussed in detail in Section 2.1.4 and Section 4.7.4, as well as Appendix I (Subsection 8.a) of the Draft EIS. Water requirements for full operation of the Mahi Pono farm plan (anticipated to be in 2030) are discussed in Section 2.1.4, Subsection 9.a of Appendix I, with details provided in Table 3, Section 3.a (p. T-4) of Appendix I in the Draft EIS. These tables include average daily per-acre water requirements by crop.

Please note that the farm plan will continue to evolve over time based on a number of factors, including the available supply of surface water, experience, which will be gained on crops that grow well in Central Maui, crops that are profitable, the size of the market for profitable crops, etc. It is unclear from your comment what additional information on Mahi Pono's plans and methods intended for use in Central Maui you think is needed.

The approach to estimating impacts and the level of detail are consistent with EIS requirements.

Comment 10: *The DEIS is not adequate because it does not provide specific data on water needs per acre per day for each crop that Mahi Pono is planning to grow.*

Response 10: The Proposed Action under assessment in the EIS is the issuance of a Water Lease. As such, the primary analysis is on the direct impacts of the proposed water diversions and the total amount of water proposed to be diverted by the EMI Aqueduct System under the Water Lease. However, with respect to your comment requesting information on the water needs to support the Mahi Pono farm plan, note that Table 2-1 (Mahi Pono Farm Plan) of the Draft EIS provides estimates of water needs, in gallons per acre per day, for the planned crop and agricultural uses as noted above in Response #9. Also, as mentioned in Response #9 above, the farm plan will evolve over time, but Table 2-1 is the best information that exists at this time. We also note that Table 3-1 in Section 3.4.13 of the Draft EIS provides anticipated water uses for Mahi Pono's farm plan in the event that no Water Lease is issued (i.e., the No Action alternative).

Comment 11: *The DEIS is not adequate because it does not provide specific data on the names and volumes of pesticides, herbicides, fungicides and petro-chemical fertilizers that Mahi Pono intends to use.*

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Response 11: As discussed in Response #3 above, pesticide use is regulated by both State and Federal law. Mahi Pono's use of these chemicals is compliant with all laws regulating pesticide use, and certified commercial applicators are utilized as required. Act 45 which was passed by the 2018 Hawai'i Legislature and effective on January 1, 2019 required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. This report as well as any other report required by law is publicly available from the respective government entity. The State of Hawai'i DOA's Pesticide Branch also provides regulatory oversight over Mahi Pono's pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. It is also noted that since January 2020 Mahi Pono committed to discontinuing use of Round-Up and other glyphosate-based herbicides. This information has been included in the Final EIS as shown in pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations.

Comment 12: *Questions concerning the ditch system and water use*

Given that much of the irrigation water costs \$1500 per Acre Foot in California

- *43,560 square feet per acre*
- *One foot deep = 43,560 cubic feet = one-acre foot*
- *One cubic foot = 7.48 gals of water*
- *43,560*7.48 = 325,828 gals per Acre Foot*
- *Equals roughly 326 thousand gals / acre foot (the unit by which water is sold in Hawaii)*
- *\$1500/ 326 = \$4.60/ thousand gals of water*
- *The historical cost of public water to A and B was \$0.003/thousand gals*
- *\$4.60/\$0.003= over 1500 times less than the cost of water in California*

The DEIS was inadequate because it did not include an explanation of why A and B and their affiliates should continue to pay so very little to the State for the use of this public asset.

Response 12: It is unclear whether the California water rate number that you cite is for water at the source or delivered to a farm. There is a big difference between these types of water charges. As an example, in 2020, the Central California Irrigation District charges \$13 per acre-foot to \$95 per acre-foot (4¢ per 1,000 gallons to 29.2¢ per 1,000 gallons) for water delivered to farms, depending on the volume used and season (Central California Irrigation District, February 25, 2020). Higher rates are charged when water supplies are low. In the case of the Proposed Action and the rate projected in the EIS, the water rate paid to the State was for raw water, available at the source. This figure does not take into account the added cost of operations and maintenance associated with the lessee's use of the EMI Aqueduct System, however the EMI Aqueduct

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System is needed to collect and deliver the water to the end user(s). The comparable scenario in California would be to make water available at the river or stream, and make it the farmers' responsibility to get the water from the river or stream to their farms.

As discussed in Section 4.7.3 of the Draft EIS, the amount of rent that the State BLNR will charge the lessee under the Water Lease will be determined based upon an appraisal conducted prior to issuance of the Water Lease. However, for the purposes of the economic and fiscal impact analyses in the Draft EIS, a projected Water Lease payment was calculated based on the equivalent per unit cost under the 2019 revocable permit. That rate was \$230,964.24. Assuming 16.8 mgd diverted from the License Area under the revocable permit, as was diverted/anticipated to be diverted in 2019, the rent rate translates to \$0.038 per thousand gallons charged to the lessee under the Water Lease. Adjusting for the 2021 revocable permit, which was obtained after publication of the Draft EIS, the rental rate translates to approximately \$238,362 which estimates EMI water use will be approximately 32.3 mgd, is \$0.19 per 1,000 gallons (adjusted for 2018 dollars. See pages 4-277 and 4-283 of the Final EIS. Hence, the amount that the State has charged EMI / A&B for water at the source is consistent with and actually greater than the high end of the range of the rates charged by the Central California Irrigation District (Table 4 of Appendix H of the Draft EIS).

Comment 13: *The DEIS did not adequately address how native Hawaiians will benefit from the sale of public waters as is mandated in the State constitution.*

Response 13: Section 2.1.1 of the Draft EIS outlines two provisions addressed to Native Hawaiian populations:

First, state water leases shall contain reservations of water for the DHHL tracts of land, as described in HRS § 171-58(g) above. Second, thirty percent (30%) of the revenues derived from all water leases issued by the State are deposited into the Native Hawaiian Rehabilitation Fund pursuant to Hawai'i State Constitution Article XII, Section 1, and is used to fund programs as prioritized in the Native Hawaiian Development Program Plan adopted by the Hawaiian Homes Commission.

Hence, homestead projects for Native Hawaiians will receive a water reservation to support such projects (undertaken by DHHL). In addition, 30 percent of the revenue generated from the subject Water Lease, as well as all other State water leases issued, will be deposited into the Native Hawaiian Rehabilitation Fund and used to fund programs as prioritized by Native Hawaiian Development Program Plan. In addition, the Office of Hawaiian Affairs (OHA) also receives 20 percent of the revenue derived from the State's public lands trust as noted in Section IIA1(b) of Appendix H and Section 4.7.3.1 of the EIS.

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The Proposed Action will benefit the Maui communities by allowing for continued use and maintenance of the EMI Aqueduct System, which supplies water to the MDWS Upcountry Maui Water System at Kamole-Weir. In addition, the Proposed Action will enable the continued provision of water by EMI to the MDWS at Nāhiku and for MDWS' Pi'iholo and Olinda Water Treatment Plants (WTP), which also source the MDWS Upcountry Maui Water System. The provision of water from EMI land to the MDWS is contractually contingent on EMI securing revocable permits and ultimately the Water Lease. Under the Proposed Action, water will continue to be delivered to MDWS domestic and agricultural uses to Upcountry Maui communities, which includes Native Hawaiian residents. In addition, the Mahi Pono farm plan will benefit the entire Maui community, including Native Hawaiians, by providing long-term jobs and supporting diversified agriculture and local food production and sustainability.

As further discussed in Response #22 below, the Applicant also recognizes that water is a public trust resource and that the Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine.

Comment 14: *The DEIS did not include an explanation of why the State of Hawaii should lease this public asset at a price that is a fraction of the fair market value rather than setting a price that allows monies to be paid to the Hawaiians as is mandated by the Hawaiian Constitution.*

Response 14: As explained above in Response #12 above and Section 4.7.3.1(d) of the Draft EIS, the Water Lease rent rate will be developed and determined by the BLNR based on an appraisal of the fair market value of the lease, which the State will commission. Regarding your comment about monies being paid to the Hawaiians, please see Response #13 above which states that 30 percent of the revenue generated from the subject Water Lease, as well as all other State water leases issued, will be deposited into the Native Hawaiian Rehabilitation Fund and the Office of Hawaiian Affairs (OHA) also receives 20 percent of the revenue derived from the State's public lands trust.

Comment 15: *During the June 7th, 2018 East Maui H2O Roundtable the experts from A and B declared to the group assembled that the water loss in the tunnels could not be measured. They said they had no idea of what seeped out of tunnels and was lost from the system. They deferred to a national average of all plumbing systems residential and commercial as 22.5% loss and used that in their calculations. At the same meeting were scientists from the USGS showing their Open File Report 2012-1115 Measurements of Seepage Losses and Gains East Maui Irrigation Diversion System, Maui, Hawaii done in 2012. This publicly available 23-page document is very*

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explicit as to where the EMI ditch system is leaking. The DEIS did not include an explanation of where the leaks are and what will be done to maximize the efficiency of the system.

Response 15: The USGS report that you cite concluded that the open ditches and tunnels in the EMI Aqueduct System incur seepage losses but also gains from groundwater, especially in the tunnels. Thus, as cited in the CWRM D&O, FOF 723, "...it is not clear whether net seepage losses even occur in the EMI diversion system." For clarification, it is within the Central Maui Field Irrigation System that there are some irrigation system losses. Those losses have been estimated to be approximately 22.7% during the time of sugar cultivation. As discussed in Section 4.2.2 of the Draft EIS, these irrigation system seepage losses provide recharge for the Kahului and Pā'ia aquifers. However, Sections 2.1.4, 3.1.1.1, and 4.2.2 of the Final EIS has been revised to include updated information regarding the groundwater resources available to Mahi Pono as shown in pages 2-11, 2-27, 3-12, and 4-76. Clarification has been added throughout the Final EIS where system losses are discussed to note that these occur within the Central Maui agricultural fields, and not within the EMI Aqueduct System.

Regarding your comment about what will be done to maximize the efficiency of the EMI Aqueduct System, no specific improvements are planned, as the system is highly efficient as is. However, with regard to the Central Maui agricultural fields, Mahi Pono expects to invest in the improvement of its Central Maui Field Irrigation System as discussed in Response #6 above.

Comment 16: *Given that with today's technology it is possible to remotely open and close diversions the DEIS did not include the reason that such a mechanism should not be mandated.*

Response 16: We acknowledge your comments. Please note that the EIS does not mandate any action. Rather, the subject EIS is a disclosure and informational document prepared to disclose the effects of the Proposed Action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the Proposed Action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects. In this case, the Proposed Action is for a 30-year State Water Lease. The State will award the Water Lease through a public auction, which will be conducted after acceptance of the EIS.

In response to your comment about technological changes to the EMI Aqueduct System, it would be extremely ineffective and cost-prohibitive to develop a reliable network that would provide the level of communication that could facilitate the installation of a remote diversion control system due to the remoteness of each intake. A more analog but still effective system of float devices along the major intakes that would automatically open and close gates based on water levels in the main ditch system would be a more reasonable alternative. Moreover, the diversion modifications required to comply with the significant increased flow requirements mandated

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under the CWRM D&O are not being done remotely. Instead, those modifications are being done manually, and with oversight by CWRM to satisfy the increased stream flow requirements.

In addition, as discussed in Response #6 above, Mahi Pono expects to make investments in improving the efficiency of its water usage in the Central Maui agricultural fields.

Comment 17: *Given that with today's technology there are diversions that first feed the stream and then divert the excess water to the Central Valley the DEIS did not explain why this would not be the preferable method of diversion as it feeds the stream first and sends the excess to the Central Valley.*

Response 17: Working with the CWRM, appropriate changes to diversions in the EMI Aqueduct System have been made and will be made, once appropriate permits are secured, to ensure compliance with the CWRM D&O, and to ensure water is provided to the stream first before any excess is diverted. As stated in Section 2.1 of the Draft EIS:

Independent of the Proposed Action, on June 20, 2018, the CWRM issued its D&O setting IIFS for numerous streams and tributaries of streams in the License Area, which includes water originating and flowing from both State and privately owned lands within East Maui. The CWRM D&O establishes a quantity of water that must remain in each stream at specified locations. The CWRM D&O ordered full stream restoration for 10 streams and partial flow restoration on 12 additional streams (Please refer to Section 1.3.4). Therefore, the maximum amount of water that can be awarded through the Water Lease is what is available for diversion after the CWRM D&O is implemented. This is the premise of the Proposed Action.

Hence, the Proposed Action must comply with the CWRM D&O and meet the IIFS of the applicable streams. Thus, water can only be diverted from the streams subject to the CWRM D&O once the IIFS is met. Moreover, the EMI Aqueduct System will only divert enough water to meet the objectives of the Proposed Action as discussed in Chapter 2 of the EIS.

Comment 18: *The DEIS did not include a list of technologies and contractors being considered for use in repairing the EMI system. It is true that fixing the tunnels seems problematic but with today's polymers that can be sprayed in 360 degrees by a traveling robot these tunnels can and should be repaired in exchange for a lease with favorable conditions.*

Response 18: The EMI Aqueduct System is an efficient water delivery system that relies on gravity. Please note that Section 2.1.2 of the Final EIS has been expanded to include details regarding the "maintenance and repair" activities associated with the Proposed Action as shown

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in page 2-7. Specifically, under the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment. With regard to your comment about tunnel repair work, please note that the USGS study you cited in Comment #15 above indicates that "...measurements in tunnel reaches generally indicated seepage gains." (see Summary and Conclusion). Thus, repairs to tunnels would not improve the efficiency of the EMI Aqueduct System and no such repairs are needed.

Comment 19: *Given that one of the biggest concerns with climate change is mosquito spread disease like Dengue Fever and Sleeping Sickness the DEIS did not address how Mahi Pono will prevent stagnant water around their diversions.*

Response 19: Section 4.2.1 of the Draft EIS addressed the interplay between stream flows and mosquitos. Specifically, Section 4.2.1 of the Draft EIS states:

In addition to the species listed above, three native damselflies (Megalagrion xanthomelas, Megalagrion pacificum, and Megalagrion nesiotes) and an introduced mosquito (Culex quinquefasciatus) habitats were also modeled to see how the water diversions may impact their population sizes. (Trutta, p. 26, 2019) In general, restoration of stream flow should improve damselfly habitat and decrease mosquito habitat where these species use instream habitats. Restoration of baseflow, however, will likely also improve habitat conditions for a number of introduced predator and competitor species of the native damselflies and thus may not, in itself, increase damselfly populations. (Trutta, p. 58, 59, 60, 2019)

The instream amount of potential mosquito habitat was quantified using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model, as provided in Section 4.2.1 of the Draft EIS and Appendix A. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat. Thus, an increase in habitat was predicted to occur at diverted flows.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. Second, Hawaiian streams are naturally flashy (i.e., they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by the Division of Aquatic Resources,

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regarding controlling introduced poecilid fishes (e.g., guppies and mosquitofish) which transmit parasites to native stream fish, it was hypothesized that increased streamflow would wash these species out of the streams. Unfortunately, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed.

While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, once established it may be difficult to control Culex mosquito by increased streamflow alone. Anecdotal observations made by Trutta Environmental Solutions staff members, support the continued presence of Culex mosquitoes under a wide range of stream flows as they reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i. Section 4.2.1 of the Final EIS has been expanded to include this discussion as shown in pages 4-58 to 4-61.

Moreover, additional analysis of the impacts of stream flow on mosquitoes has been added to Appendix C and Section 4.4.2 of the Final EIS has been revised to reflect this additional analysis as shown in pages 4-126 to 4-127, and pages 4-130 to 4-131.

Comment 20: Questions concerning public oversight and liability. *Given that this is a 2700 page document the DEIS did not include the names, titles and email addresses of all of those state officials that have fully read and digested this material on the behalf of the public interest*

Response 20: It is not known which individuals have fully read and digested the Draft EIS. However, as required by HRS Chapter 343 and HAR 11-200, Chapter 9 of the Draft EIS does include a list of all those governmental agencies, organizations and individuals that have, to the Applicant's knowledge, either participated in the EIS process and or received notifications regarding the EIS process. Moreover, as required by HRS Chapter 343 and HAR 11-200, the Final EIS includes a list of all those that provided comments in response to the early consultation efforts undertaken in November 2016, the two public scoping meetings held shortly after publication of the EIS Preparation Notice, and those who submitted comments on the EIS Preparation Notice, as well as on the Draft EIS, which are reproduced in Appendix N along with their respective response letters. The Office of Environmental Quality Control also published notification of the availability of the Draft EIS, and that notice and the Draft EIS itself, are available to the public to view on OEQC's website. It is possible that other State agencies / officials, organizations, and individuals who did not participate in the EIS process or receive notifications regarding the EIS have also reviewed the Draft EIS.

As discussed in Section 1.4 of the EIS, BLNR is the accepting authority for this Final EIS.

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Comment 21: *Since roughly 70% of the ditch system was built on State Land and is therefore owned by the State since the 1930s, the DEIS did not include the standards to which the ditch system on public lands must be restored and maintained as a part of the lease.*

Response 21: Please note that the EMI Aqueduct System is not owned by the State. The EMI Aqueduct System is privately owned by East Maui Irrigation Company, LLC (EMI). EMI is jointly owned by Alexander & Baldwin (A&B), and Mahi Pono, LLC. The Collection Area, as described in Section 2.1.2 of the Draft EIS, for the EMI Aqueduct System covers approximately 50,000 acres, of which 33,000 acres are owned by the State (the License Area) and 17,000 acres are privately owned. The EMI Aqueduct System spans both the State-owned and EMI-owned lands and is an integrated system. In 1938, the Territory (now the State) of Hawai'i and EMI entered into an agreement (the "1938 Agreement"), which is further described in Section 3.3 of the Final EIS as shown on pages 3-24 to 3-25. The 1938 Agreement was entered into to facilitate and govern the continued auction of long term (30-year) water licenses of the State-owned portions of the Collection Area so that, regardless of who the successful bidder at auction may be, the EMI Aqueduct System could continue to be operated across both the State-owned and EMI-owned lands by EMI, the licensee (if not EMI), the State, or both, as the case may be.

To that end, the State and EMI each granted to the other "perpetual" easements to those portions of the EMI Aqueduct System located on the other's land. The duration of these "perpetual" easements was stipulated to last until the termination of the 1938 Agreement, which has not occurred. The 1938 Agreement is still in place and valid.

As discussed in the Section 2.1.2 of the Final EIS, under the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment.

Comment 22: *The DEIS did not include*

- *What will be the method of overseeing the use of these public trust waters, the health of the watershed and the maintenance of the State-owned ditch system?*
- *What will be the consequences of mismanagement?*
- *What is the legal structure to enforce such consequences?*
- *How much will this monitoring cost the tax payers?*
- *Will the lease monies cover this cost?*

Response 22: Please see Response #21 regarding ownership of the EMI Aqueduct System (it is owned by EMI and not by the State). Regarding water being a public trust, we acknowledge that

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the Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires the BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of water that the Public Trust Doctrine requires to be left undiverted from the streams in the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to BLNR for the auction of the Water Lease. As such, we expect BLNR, in its decision-making regarding the requested issuance of the Water Lease, to follow the judicial guidance that has already been given regarding what is necessary for BLNR to comply with the requirements of the Public Trust Doctrine. Please note, finalization of this EIS does not result in issuance of the Water Lease; any decision on the Water Lease auction and issuance of the Water Lease would happen only after acceptance of this EIS, and through a separate process before the BLNR.

As discussed in Section 2.1 of the Draft EIS, HRS § 171-58(e) requires a watershed management plan in connection with a water lease. The BLNR "*shall prescribe the minimum content of a watershed management plan; provided that the watershed management plan shall require the prevention of the degradation of surface water and ground water quality to the extent that degradation can be avoided using reasonable management practices.*" Section 2.1 of the Draft EIS described the State's action with respect to the minimum content requirements of a watershed management plan at that time. However, this section of the Final EIS has been revised to take into account the BLNR's actions on October 11, 2019, after the publication of the Draft EIS, under agenda item D-2, whereby the BLNR approved the minimum content requirements for a watershed management plan as shown in pages 2-2 to 2-4. A copy of the BLNR-approved DLNR report is enclosed as Appendix O-1. The BLNR delegated authority to the DLNR staff to jointly develop watershed management plans with water lessees to ensure that the watershed management plan aligns with the goals of watershed protection to maintain watershed function and water yield and to restore or maintain a certain level of biological integrity that is the foundation of a healthy watershed.

Additionally, Chapter 4 of the Draft EIS addresses the existing environment, impacts and proposed mitigation measures of the Proposed Action. Section 4.4.1 of the Draft EIS discusses the mitigation measures proposed, which include, avoiding the introduction or transport of new invasive plant species using such measures as inspecting and washing all vehicles arriving from outside of the License Area prior to maintenance activities on cliff sides, near waterfalls, and in other native species-dominated areas. Designated locations for such washing may be set up. Furthermore, in the event construction materials are brought into the License Area, such materials arriving from outside of Maui should be washed and/or visually inspected for invasive materials and non-native species at designated locations and by a qualified botanist/entomologist. To the extent that materials can be purchased locally, they should be. Moreover, as discussed in

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Section 3.2.2.2 of the Draft EIS, to the extent that the geographical extent of the License Area may be reduced, those areas would presumably be under the full control of a State agency and subject to whatever measures the State may require. Please note that Section 3.2.2.2 of the Final EIS has been expanded to include a more robust discussion regarding a modified (i.e. smaller) License Area as shown in pages 3-21 to 3-24.

Regarding your other questions about the consequences of mismanagement, the legal structures to enforce such consequences, costs to taxpayers, and costs of the Water Lease, these have yet to be determined and are at the discretion of BLNR. However, the Water Lease will be a legal contract and the Applicant, if awarded and accepts the Water Lease, will comply with all conditions therein.

Comment 23: *As stated above the use of excessive tillage and the lack of cover crops leaves the soil not only open to wind and water erosion but makes it a tremendous threat to our near shore reef health. Should we get 3 to 4 inches of rain in a single storm the silting that is inevitable on our precious reefs would be disastrous. The DEIS did not discuss how State agencies will protect the island of Maui from such a logical end? Will conservation practices be mandated as a stipulation for the lease?*

Response 23: Please note that the Water Lease terms and conditions, which are at the discretion of the BLNR, will only apply to the State-owned lands and government-owned waters of the License Area, and will not apply to Mahi Pono's agricultural fields in Central Maui. The farming of the Central Maui fields will not adversely impact the nearshore coastal waters within Central Maui. As explained in Section 4.2.3 of the Draft EIS, relating to Coastal Waters in near Central Maui:

No significant impacts on coastal waters in the region are anticipated as the Proposed Action will reduce wind-blown erosion that could occur if the Central Maui fields were not in cultivation, and which could damage nearshore environments.

In addition, regarding your comment about how Mahi Pono will implement conservation practices, Mahi Pono will follow the BMPs as discussed in Response #3 above.

Comment 24: *The DEIS did not include an explanation of why a system of public auction should be used to place the value on this water as it is impossible for any other entity to compete without owning large sections of land making an auction not in the public interest.*

Response 24: HRS § 171-58(c) calls for State water leases to be issued by public auction. HRS § 171-16(a) describes the requirements for notice of the public auction, which include the upset

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price or rental to be charged (based upon an appraisal). It is our understanding that this is the process the State will be following for the subject Water Lease.

Comment 25: *The DEIS did not explain why a fair market value is not set for this public asset and then offered for lease at a fair rate (adjustable for inflation) as would be in the public interest.*

Response 25: As discussed above in Responses # 12, 14, and 24, and discussed several times in the EIS, the Water Lease will be issued after an appraisal done by the State and through a public auction. Through this process, BLNR will determine the Water Lease rental rate.

Comment 26: *There have been countless wild fires in the Central Valley this summer and the County of Maui has had to take responsibility for fighting them. When A and B owned the land I never saw a fire in the Central Valley and as I understand it they used a variety of three inter-related methods of dealing with brush fires:*

- *They maintained a fire truck on property*
- *They maintained firebreaks*
- *They kept certain reservoirs full of water and had a system for the emergency use of that water to squelch fires immediately*

The DEIS did not explain why the new land owner is not being responsible for fires on their land? What is their responsibility for containing fires on their land or reimbursing the County of Maui for fighting them?

Response 26: Mahi Pono has continued its relationship with the County of Maui Fire Department (MFD), and is committed to helping MFD deal with brush fires. This commitment includes maintaining a system of firebreaks and keeping water delivery trucks and other equipment available in the event of brush fires. Mahi Pono is also continuing to divert water to place in its reservoirs for fire suppression needs. Please refer to Response #7 above regarding the addition to the Final EIS, explaining that approximately 27 mgd was being diverted as of October 2019 for the County of Maui's take for its Kamole-Weir WTP and the KAP and use by Mahi Pono and its lessees for agricultural, industrial and fire suppression needs. However, the 27 mgd is not enough to continually store water in the reservoirs used for fire suppression needs as well as implement Mahi Pono's farm plan. In Section 4.14.1 of the Draft EIS, with regard to the agricultural fields of Central Maui, it states:

The Proposed Action will allow for the resumption of the relationship with the Maui County Fire Department which allows their use of water from the various reservoirs within the agricultural fields to fight fires.

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Hence, under the Proposed Action, approximately 85.22 mgd of diverted stream water would be available to irrigate and cultivate crops in these fields. Irrigating and cultivating fallow fields reduces wildfire risks. Additionally, as Mahi Pono builds out its farm plan, there will be a greater presence of employees in these fields. These employees can more immediately identify any fires that start, and can more capably implement fire prevention measures.

Under the Proposed Action, water that is being stored in reservoirs in the Central Maui agricultural fields for irrigation purposes would also continue to serve a secondary purpose by providing as-needed water for fire suppression needs.

Comment 27: *The DEIS did not provide the policy number and amount of liability insurance that Mahi Pono carries to protect the public when one of the Central Valley fires causes property damage.*

Response 27: Mahi Pono's liability insurance is not within the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS. Please refer to Response #26 above for the measures that Mahi Pono takes to assist with the suppression of brush fires in Central Maui.

Comment 28: *The DEIS did not spell out the process of applying for a lease for public waters so that other entities could also enter the public auction.*

Response 28: It is our understanding that the State will be undertaking a public auction process for the proposed Water Lease pursuant to HRS § 171-58(c), (e) and (g). The Applicant is not aware of exactly how that process will be followed, as the process is under the purview of the State, but understands generally that there will be an appraisal and public auction component.

Comment 29: *Many Maui residents fear housing development dependent on the use of agricultural water as is routinely done in California. The DEIS did not explain the mechanism for preventing the use of agricultural water for housing development.*

Response 29: As stated throughout the Draft EIS, the Proposed Action is for the issuance of a long-term Water Lease from the State of Hawai'i. The State can impose various conditions when issuing the Water Lease. In order to proceed with the Water Lease, the lessee would have to agree to any lease conditions imposed by the State. Moreover, housing within the Central Maui

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agricultural fields is not a "reasonably foreseeable" impact from the Proposed Action. See HAR § 11-200-2 (Definitions). Please note that no such housing or similar development is proposed.

Comment 30: *Questions concerning the impact on Hawaiian Cultural Practices and Natural Resources*

The DEIS did not include the amount of money that the State agencies spend protecting the reefs that are of utmost value to the Hawaiian culture.

Response 30: As stated in Response #27, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'ānae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS. Specifically as to the concerns raised in your comment, Section 4.2.3 and Section 4.6 of the EIS discuss the existing conditions of the nearshore coastal water resources, as well as cultural resources as applicable, and any associated impacts of the Proposed Action. The amount of money State agencies spend protecting reefs is beyond the scope of this EIS.

Comment 31: *Given that the Hawaiian culture is dependent on healthy reefs and that fertilizer run-off, wind-blown particulate matter and soil erosion from excessive rain are all extremely detrimental to the health of a reef the DEIS did not explain how this lease will protect our reefs. If Mahi Pono is enabled to continue practices that are known to hurt our reefs at the same time that the State spends millions of dollars to protect them then the State is working against itself. This was not addressed in the DEIS.*

Response 31: As discussed in Response #30 above, Section 4.2.3 and Section 4.6 of the EIS discuss the existing conditions of the nearshore coastal water resources, as well as cultural resources as applicable, and any associated impacts of the Proposed Action. Specifically, Section 4.2.3 of the Draft EIS, relating to Coastal Waters in near Central Maui, states:

No significant impacts on coastal waters in the region are anticipated as the Proposed Action will reduce wind-blown erosion that could occur if the Central Maui fields were not in cultivation, and which could damage nearshore environments.

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Hence, the Proposed Action will not adversely impact the nearshore coastal waters within Central Maui. Conversely, under the No Action alternative, wind-blown erosion is anticipated to increase, adversely impacting the nearshore coastal waters within Central Maui. With regard to Mahi Pono's agricultural practices, Mahi Pono will follow BMPs as discussed in Responses #2 and 3 above.

Comment 32: *Given that in the past A&B did not protect the ditch system watershed from invasive species and thereby harmed State lands that are meant to support Hawaiian Cultural practices – the DEIS did not address how will this change under the leadership of Mahi Pono?*

Response 32: The State-owned lands addressed in this EIS for the proposed Water Lease is the License Area. EMI continues to take measures to mitigate the spread of foreign pests in the License Area and related lands by cleaning boots, equipment and machinery prior to entry along the EMI Aqueduct System. EMI staff is careful to clean machinery before relocating it to different sites within the License Area and outside the License Area.

To date, EMI has worked closely with the Maui Invasive Species Committee (MISC) to assist in mitigating non-native weeds along the EMI Aqueduct System and access roads. Typical procedures involve EMI staff notifying MISC of sightings and locations of non-native weeds, and then facilitating access to these areas for MISC to conduct appropriate treatment. Specifically, Section 4.4.1 of the Final EIS has been revised to reflect this discussion as shown in pages 4-121 to 4-124.

Moreover, pursuant to HRS § 171-58(e) a watershed management plan is required in connection with a water lease as discussed in Response #22 above.

Sections 4.4.1 and 4.4.2, as well as Appendix C, of the Draft EIS explained in detail what is recommended to prevent impacts from invasive species to critical status flora and fauna, which include resources used for Native Hawaiian cultural resources as detailed in Section 4.6 of the Draft EIS. Section 4.4.1 of the Draft EIS states:

However, to the extent that maintenance activities are undertaken within the License Area in pristine areas, such as on cliffsides, nears waterfalls, or in other native species dominated areas, the following avoidance and minimization measures are recommended:

- *A qualified biological monitor should be on site to ensure that no listed or candidate species are impacted.*

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- *The monitor should have familiarity with the plants of the area, including special-status species, familiarity with natural communities of the area, including special-status natural communities, experience conducting floristic field surveys, and experience with analyzing impacts of development on native plant species and natural communities*
- *To avoid the introduction or transport of new invasive plant species into more pristine portions of the License Area during EMI Aqueduct System maintenance activities, all equipment and vehicles arriving from outside the License Area should be washed and inspected prior to any maintenance activities on cliff sides, near waterfalls, and in other native species-dominated areas in the License Area. Such washing and inspecting should be done at a designated location.*
- *Construction materials arriving from outside Maui should also be washed and/or visually inspected (as appropriate) for excessive debris, plant materials, and invasive or harmful non-native species (plants, amphibians, reptiles, and insects). When possible, any raw materials used in maintenance activities should be purchased from a local supplier on Maui to avoid introducing non-native species not present on the island. Inspection and cleaning activities should be conducted at a designated location. The inspector must be a qualified botanist/entomologist able to identify invasive species that are of concern relevant to the point of origin of the equipment, vehicle, or material.*

Section 4.4.2 of the Draft EIS states:

Nevertheless, to minimize potential impacts to fauna, the following measures should be implemented:

- *Regular on-site staff should be trained to identify special-status species with the potential to occur on-site and should know the appropriate measures to be taken if they are present.*
- *If a downed tree must be removed from a road, trail, or other passageway, it will be inspected for the presence of active bird nests, specifically the nest of an MBTA-protected species that may have been present prior to the tree falling. If an active nest is found, it should be protected in place until the chicks fledge.*
- *If tree trimming occurs in the 'i'iwi, Maui parrotbill and crested honeycreeper range (as defined in Section 5.2.5) from November to June, a qualified biologist should survey the trees for active nests of these species.*

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- *If a Hawaiian goose is observed in the area during construction activities, all activities within 100 feet (30 m) of the species should cease, and work should not continue until the species leaves the area on its own accord.*
- *If a Hawaiian goose nest is discovered, all activities within 150 feet (46 m) of the nest should cease, and the USFWS should be contacted. Work should not resume until directed by the USFWS.*
- *If tree removal occurs during the bat breeding season (June 1 to September 15), direct impacts could occur to juvenile bats that are too small to fly but too large to be carried by a parent. To minimize this impact, no trees taller than 15 feet (4.6 m) should be trimmed or removed between June 1 and September 15.*
- *The use of barbless top-strand wire is recommended for all fence construction to avoid entanglement of Hawaiian hoary bat.*
- *A qualified biologist should work closely with the USFWS and monitor Endangered Species Act-listed damselflies to ensure activities do not have a negative impact...*

Nevertheless, to minimize potential impacts to invertebrate species, the following measures should be implemented:

- *A survey for potential larval host plants for Blackburn's sphinx moth (particularly tree tobacco) should be conducted by biologists before construction/vegetation clearing. Results of the survey should be provided to the USFWS.*
- *If host plants are found, surveys for Blackburn's sphinx moth should be performed according to the most recent USFWS guidance, and preferably during the wet season (January to April), roughly 4 to 8 weeks following a significant rainfall event. Results of the survey should be provided to the USFWS. Any necessary follow-up actions should be coordinated with the USFWS.*
- *A qualified biologist should work closely with the USFWS and monitor Endangered Species Act-listed damselflies to ensure activities do not have a negative impact.*

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However, please note that Section 4.4.2 in the Final EIS has been revised to remove the mitigation related to tree removal and fencing, as those activities are generally not contemplated within the License Area in connection with the Proposed Action. See 4-129 to 4-131 of the Final EIS.

Comment 33: *Given that the investment money from the Canadian pension fund is meant to support an ESG investment the DEIS did not address how will this lease further environmental, social and community good?*

Response 33: The Draft EIS does address anticipated social impacts, including cultural impacts. Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures) of the Draft EIS provides a comprehensive description and impact analysis of the East Maui Lease Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts.

Specifically, the socio-economic impacts of the Proposed Action are addressed at length in Section 4.7 (Socio-Economic Characteristics) of the Draft EIS, and in further detail in Appendices G through I. Section 4.7 has subsections addressing impacts to populations and impacts (Section 4.7.1), impacts to social characteristics (Section 4.7.2), impacts to the economy and other fiscal considerations (Section 4.7.3), and impacts to the agricultural economy (Section 4.7.4). The potential socio-economic impacts of the alternatives to the Proposed Action considered by the Draft EIS are analyzed in Sections 3.4.11 (Social Characteristics), 3.4.12 (Economic and Fiscal Resources), and 3.4.13 (Agricultural and Related Economic Resources). Moreover, secondary and cumulative impacts are discussed in Section 4.16 of the Draft EIS. As stated in Section 4.16.1 of the Draft EIS:

The secondary impacts of the Proposed Action primarily relate to developing diversified agriculture in Central Maui, including the economic and social impacts of diversified agriculture and job creation on Maui's broader economy

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and the County's tax revenues. These impacts are summarized in Section 4.7 Socio-Economic Characteristics based on a detailed evaluation in the Economic and Fiscal Impact Study (See Appendix H) and the Social Impact Assessment (See Appendix G).

As stated in Section 4.16.2:

The cumulative impact of the Proposed Action can be regarded as an additive impact overlaid on more than 100 years of history during which the EMI Aqueduct System was developed to provide water for the development of a sugar industry in Central Maui as well as for the later development of Upcountry Maui. This DEIS summarizes the pertinent history in Chapters 1 and 2 as a basis for understanding the events that have shaped the existing conditions described in Chapter 4. In addition, the following studies document the pertinent history related to the sugar industry in Maui and the EMI Aqueduct System and how they have shaped existing condition:

- *Archaeological LRFI (See Appendix E) discusses the historic context of the Proposed Action;*
- *CIA (See Appendix F) also provides a historic context and documents cultural resources and practices recalled by cultural informants;*
- *HSA (See Appendix D) documents the various characteristic components of the EMI Aqueduct System that provide the historic context for the functioning system; and*
- *SIA, which discusses history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono.*

Specifically, the Social Impact Assessment (SIA), provided as Appendix G of the Draft EIS, obtained input from several community members, many of whom have direct and long-term experience with the streams in the subject area. As discussed in Section 4 of Appendix G (Preliminary Community Issues), seven focus groups were convened in November 2018. Participants in these sessions included residents, farmers and ranchers, and people who are active in environment and sustainability efforts. These participants lived in Ke'anae, Wailuānuī, Huelo, Ha'ikū, Kula, Makawao and Pukalani. Sixty-four people signed in at these focus groups, but the actual number of participants is higher because some individuals arrived after the session started and did not sign in.

In addition, there were several interviews conducted in April 2019 to obtain feedback on the then-recent sale of A&B land holdings to Mahi Pono. The interviewees were diverse in interest and place of residence. Section 5 of Appendix G discusses the social impacts from an overall community perspective and on identified special social groups which are summarized in Section 4.7.2 of the EIS. Based on comments received to the Draft EIS, Appendix G added Section 6

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discussing the social impacts from the “big picture” or cumulative perspective. Section 4.7.2 of the Final EIS has been revised accordingly as shown in pages 4-262 to 4-272 of the Final EIS. Relatedly, Appendix H (Economic and Fiscal Impact Study) and EIS Section 4.7.3 has been revised to include the current revocable permit rates as well as updates from Appendix I (Agricultural and Related Economics Impacts report), which is summarized in EIS Section 4.7.4 regarding farming in East Maui as shown in pages 4-288 to 4-293. Moreover, in addition to the above community outreach, the Cultural Impact Assessment (CIA) provided as Draft EIS Appendix F, includes input from three interviewees, as well as numerous declarations made during the CWRM D&O proceedings. Also, Cultural Surveys Hawai'i (CSH), which prepared the CIA, reached out to members of the community who provided comments on the Draft EIS related to the CIA and the CIA has been updated based on comments. The CIA now includes additional interviews and consultation with the Office of Hawaiian Affairs, Mr. Lafayette Young, Mr. Albert Perez, and Ms. Lucienne De Naie that identified cultural resources and potential impacts, as well as recommended mitigation measures which have been included in Section 4.6 as shown in pages 4-158 to 4-159 of the Final EIS.

Regarding your comment about the investment money from the Canadian pension fund to support an ESG investment, please note that the purpose of this EIS is not to determine whether or not the proposed Water Lease will meet the Canadian Pension Fund's (PSP) ESG policy. The purpose of the EIS is to identify impacts from the proposed Water Lease. The EIS, however, will inform PSP as to whether its ESG policy is being met. The PSP has an ESG policy. PSP also has an annual “Responsible Investing Report” which can be accessed at https://www.investpsp.com/media/filer_public/documents/PSP-2020-responsible-investment-report-en.pdf. The ESG policy sets out a policy to be followed. The policy does not address specific situations or have numeric standards. The specific situations are determined by PSP on a case by case basis. The ESG policy explains:

We recognize that the materiality of ESG factors varies across companies, industries, geography and time. Accordingly, we take a pragmatic view when applying our approach to responsible investing taking into account the asset class and type of investment. This approach is tailored to local, social, and legal environments, and to the commercial imperatives of the companies in which we invest.

The EIS appropriately and fully discloses the detriments and benefits of the proposed Water Lease across the social and environmental general ESG framework.

Comment 34: *Thank you for your attention to detail on this very important public matter. I am not opposed to water being given to an entity that actually provides food for our local population while also improving the eco-systems of Maui. This project is an ESG investment for the Canadian pension fund which makes it mandatory that the project does social, environmental*

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and social good. It is possible to make a profit while also benefiting the earth and its inhabitants. For the State to allow less is to neglect its responsibility to look out for the common good in this environment of the multiple threats of climate change.

Response 34: We acknowledge your comments above and note that you are not opposed to water being given to an entity that provides food for the local population while also improving the ecosystems of Maui. As discussed in Response #9 above, at full development of its farm plan, Mahi Pono's local sales, including those of its community farm tenants, will comprise roughly 65% of total sales generated from Central Maui, with exports being 35%. Moreover, as discussed in Response #22, HRS § 171-58(e) requires a watershed management plan in connection with a water lease.

As noted in Response #33 above, this EIS will inform PSP as to whether its ESG policy is being met. The EIS appropriately and fully discloses the detriments and benefits of the proposed Water Lease across the social and environmental general ESG framework.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: chris@rainbowridgewest.com
To: ian.c.hirokawa@hawaii.gov
Cc: [Public Comment](#)
Subject: COMMENTS on DEIS A&B Water Lease
Date: Friday, November 8, 2019 8:33:31 AM

ian.c.hirokawa@hawaii.gov
waterleaseeis@wilsonokamoto.com

Aloha kahou,

Below are my comments regarding the Draft Environmental Impact Statement (DEIS), September 2019, for the Proposed 30-year Water Lease for the Nahiku, Keanae, Honomanu and Huelo License Areas.

Mahalo,

Chris Gaarder, PO Box 1032, Hana, HI, 96713
chris@rainbowridgewest.com

- Please extend the comment period due to the lengthy nature of the document and the importance of this issue to the community. **TO ACHIEVE THIS, A&B SHOULD WITHDRAW ITS DEIS AND RESUBMIT IT FOR PUBLICATION IN THE ENVIRONMENTAL NOTICE WITHOUT ALTERATIONS.** This short delay is minor in comparison to the 30-year lease that is sought, and will ensure community members who have direct knowledge of the potential impacts of the proposed lease have an opportunity to offer their comments and strengthen the process.
- The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species, and does not address the impact of stream restoration on recently restored streams and muliwai. Cultural practitioners and aquatic experts need to address changes in 'o'opu, hihiwai and 'opae populations they have seen where flows have been restored recently, and this should be part of the environmental impact analysis.
- The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands and require a management plan and funding. How is it possible to analyze the environmental impact of a plan that doesn't exist? Where in the DEIS does it address the impact of potentially not managing the invasive species?
- The DEIS does not include analysis of an alternative to split the system into service area units. For example, Nahiku has a dedicated pipe from its source to the County Water system, using the ditch and tunnels only to support the pipe. A separate utility could possibly take over this portion of the lease area. The DEIS omits details which are needed to make these alternative analyses.
- The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for over 100 years as the "baseline condition". It does not address the impacts of operation and maintenance of the system which alter the natural baseline condition. The DEIS needs to focus on an option of no diverted streams and how that would benefit the East Maui ecosystems and communities.
- The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of demand, future rainfall and future water supplies. How do the uncertainties of the Mahi Pono agricultural needs, the same

uncertainties they describe in their vague agricultural plans, support the concept of a 30 year commitment?

- The DEIS needs to include a Watershed Management Plan. The methods of managing the watershed for the next 30 years, including access management, have a huge impact on the environment and should be addressed before the DEIS is reviewed. Limiting access needs to be addressed.
- In the Cultural Impact Analysis, Section 7.6 Impacts and Recommendations, the DEIS recommends professional analysis by cultural, ethnobotanical, scientific and/or biological experts as the way to address impact questions of various alternatives. Why was analysis not completed prior to the DEIS, rather than deferring these elements which have environmental impacts.
- The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.
- The DEIS needs to address the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Chris Gaarder
P.O. Box 1032
Hana, HI 96713
chris@rainbowridgewest.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Gaarder:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please extend the comment period due to the lengthy nature of the document and the importance of this issue to the community. TO ACHIEVE THIS, A&B SHOULD WITHDRAW ITS DEIS AND RESUBMIT IT FOR PUBLICATION IN THE ENVIRONMENTAL NOTICE WITHOUT ALTERATIONS. This short delay is minor in comparison to the 30-year lease that is sought, and will ensure community members who have direct knowledge of the potential impacts of the proposed lease have an opportunity to offer their comments and strengthen the process.*

Response 1: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

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Comment 2: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species, and does not address the impact of stream restoration on recently restored streams and muliwai.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not sufficiently analyze the impacts of diverting water on native aquatic species. Please note that the HSHEP model in Appendix A estimates streamflow at all diversion locations based on watershed and rainfall characteristics and analyzes each reasonable alternative on stream flow in Section 3.4.3 and Section 4.2.1 of the Draft EIS. The combination of the lower and upper bounds used for the HSHEP model in Appendix A, provide the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as by definition the changes must fall somewhere between 100% diversion and 0% diversion.

The two scenarios presented in Appendix A of the Draft EIS, the Proposed Action compliant with the CWRM D&O (Trutta Environmental Solutions' 2018 IIFS scenario) and No Action Alternative (30% remaining flow diversion) are examples of how different flow restoration scenarios result in different amounts of habitat restored. The HSHEP model is used to quantify these differences based on flow restoration changes at specific diversions.

As discussed in Section 3.4.3 of the Draft EIS, the HSHEP model requires specific diversion conditions at each diversion. Applying the model to the Reduced Water Volume alternative would require information regarding where stream flows are proposed to be increased over the Proposed Action and the amounts. Given such information, the HSHEP model is able to readily calculate the number of remaining Habitat Units (HU) in any given scenario. The appendices contained within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report (Appendix A of the EIS) provides the necessary data to form a scenario that the HSHEP model can use to analyze and quantify the changes that occur. Hence, the HSHEP model and the appendices within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report provides data that can assist decision makers understand how impacts could change across different diversions scenarios.

Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains

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within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown in pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text in pages 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See pages 4-61 to 4-62 of the Final EIS.

Comment 3: *Cultural practitioners and aquatic experts need to address changes in 'o'opu, hīhīwai and 'ōpae populations they have seen where flows have been restored recently, and this should be part of the environmental impact analysis.*

Response 3: We acknowledge your comments. Please note that many people at the EISPN public scoping meetings on February 22nd and 23rd, 2017 testified noting positive impacts seen from increased stream flow resulting from the cessation of sugar operations, please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See pages 4-239 to 4-252 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. This is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSHEP model estimated that approximately 79.8% of total HU would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected

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under the No Action alternative. With regards to 'o'opu, hīhīwai, and 'ōpae, please note that the HSHEP model included the report in Appendix A which is summarized in Section 4.2.1 of the EIS found that under the Proposed Action the habitat for species such as 'ōpae, 'o'opu, and hīhīwai would increase from what was available under historic diversion rates.

Comment 4: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands and require a management plan and funding. How is it possible to analyze the environmental impact of a plan that doesn't exist? Where in the DEIS does it address the impact of potentially not managing the invasive species?*

Response 4: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

With regards to your comment about analyzing the environmental impact of a plan that does not exist, please note that it is not within the scope of the EIS to analyze the existing or forthcoming watershed management plan. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

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With regards to your comment about where the Draft EIS discusses invasive species, it is noted in Appendix C that low-elevation portions of the License Area are already highly impacted by invasive plants. However, it is noted in Appendix C that high-elevation portions of the License Area are predominately dominated by native species and is very likely to contain habitat for several endangered or threatened species. Impacts related to flora and fauna as a result of the Proposed Action are discussed in Section 4.4 of the EIS. Please note that Section 4.4.1 and Section 4.4.2 have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Comment 5: *The DEIS does not include analysis of an alternative to split the system into service area units. For example, Nahiku has a dedicated pipe from its source to the County Water system, using the ditch and tunnels only to support the pipe. A separate utility could possibly take over this portion of the lease area. The DEIS omits details which are needed to make these alternative analyses.*

Response 5: Please note that it is not within the scope of the EIS to analyze splitting the EMI Aqueduct System into service units. As noted in Response #4 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS. Moreover, please note that the EMI Aqueduct System is one integrated system that works by gravity and cannot be split into various servicing units.

With regards to Nāhiku, please note that following publication of the Draft EIS, the applicant received additional information from the MDWS regarding the source of the water that services the Nāhiku community. A copy of the MDWS letter is included in Appendix P to the Final EIS. Please note, the description of the Nāhiku water service from Section 2.1.3.3 of the Draft EIS, has been revised to take into account clarifications from the MDWS, as shown in pages 2-21 to 2-22 of the Final EIS.

According to MDWS, EMI's West Makapipi Tunnel 2, Well No. 4806-07, which is also known as the "Nāhiku Tunnel", is the sole source of water for the MDWS Nāhiku Water Service Area. It is our understanding that EMI developed and owns the Nahiku Tunnel that is the source of the

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water. Per a 1973 Memorandum of Understanding with EMI and HC&S as amended, MDWS can draw only up to 20,000 gallons of water per twenty-four hour day to serve the Nāhiku community from properties owed by EMI and those under license from the State. EMI continues to deliver water to the Nāhiku community pursuant to a 2018 agreement which embodied the 1973 agreement as amended, which is premised upon EMI's continued receipt of permits or a lease from the State BLNR. Even though the agreement provides the MDWS a right to up to 20,000 gpd per twenty-four hour day, EMI has accommodated the needs of the Nāhiku community, which have ranged between approximately 8,345 (2018) to 40,925 (2007) gpd on a daily basis, although supply of amounts over 20,000 gpd on any given day is not required under the agreement.

Comment 6: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for over 100 years as the "baseline condition". It does not address the impacts of operation and maintenance of the system which alter the natural baseline condition. The DEIS needs to focus on an option of no diverted streams and how that would benefit the East Maui ecosystems and communities.*

Response 6: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from

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the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown in pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 7: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of demand, future rainfall and future water supplies. How do the uncertainties of the Mahi Pono agricultural needs, the same uncertainties they describe in their vague agricultural plans, support the concept of a 30 year commitment?*

Response 7: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters.

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However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment.

The uncertainties you state about the Mahi Pono farm plan are unclear. However, as discussed in Section 2.1.4 of the Draft EIS that the Mahi Pono farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, which includes the DHHL water reservation.

Comment 8: *The DEIS needs to include a Watershed Management Plan. The methods of managing the watershed for the next 30 years, including access management, have a huge*

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impact on the environment and should be addressed before the DEIS is reviewed. Limiting access needs to be addressed.

Response 8: Please note that as discussed in Response #4 above, Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Comment 9: *In the Cultural Impact Analysis, Section 7.6 Impacts and Recommendations, the DEIS recommends professional analysis by cultural, ethnobotanical, scientific and/or biological experts as the way to address impact questions of various alternatives. Why was analysis not completed prior to the DEIS, rather than deferring these elements which have environmental impacts.*

Response 9: The cultural, ethnobotanical, biological, and other scientific studies for the Draft EIS were performed prior to publication of the Draft EIS. It is typical in the preparation of EIS documents that the various technical consultants do not review the work of other consultants, but rather, the EIS preparer synthesizes the information from various sources within the EIS document. Since the Draft EIS was published the CIA consultant reviewed the studies prepared by the other consultants, as applicable to the CIA's recommendations, and determined that the CIA recommendations have been satisfied by the following studies: Appendix A (HSHEP), Appendix B (Assessment of Streams & Ocean Water Chemistry), Appendix C (Terrestrial Flora and Fauna Technical Report), Appendix D (Historical Structure Assessment), Appendix E (LRFI), Appendix G (Social Impact Assessment), Appendix H (Economic and Fiscal Impact Study), and Appendix I (Agricultural and Related Economic Impacts). Of these studies, the

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HSHEP, Assessment of Streams & Ocean Water Chemistry, Terrestrial Flora and Fauna Technical Report, Historical Structure Assessment, Social Impact Assessment, and the LRFI address the recommendations made by the CIA. In light of the analyses and recommended mitigation measures developed by other consultant studies or recommended through community consultation have been added to Section 4.6 Final EIS as shown on pages 4-239 to 4-252.

Comment 10: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 10: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided in pages 4-61 to 4-67 of the Final EIS.

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The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 11: *The DEIS needs to address the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 11: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown in pages 4-58 to 4-61.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water

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habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the *Culex* mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for *Culex* mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the *Culex* mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of *Culex* mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: [Chris Mentzel](#)
To: ian.c.hirokawa@hawaii.gov; [Public Comment](#)
Subject: Comment on The Proposed Lease (Water Lease) for the Nahiku, Keanae, Honomanu and Huelo License Areas
Draft Environmental Impact Statement
Date: Thursday, October 31, 2019 9:02:23 PM

Gentlemen,

I am concerned about the recent fires on Mahi Pono land. These fires are greatly affecting the health and property of Maui residents, yet the pension fund of Canadian firefighters has not set up proper precautions for such fires.

Please inform me where in the DEIS you have described in detail how water from the proposed water lease will be transported, stored, pumped and used for the purpose of avoiding and fighting such fires and how the safety of Maui firefighters is guaranteed.

Thank you,

Chris Mentzel
Kihei
chris@mentzel.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Mr. Chris Mentzel
Chris.mentzel.2016@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Mentzel:

Thank you for comments dated October 31, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am concerned about the recent fires on Mahi Pono land. These fires are greatly affecting the health and property of Maui residents, yet the pension fund of Canadian firefighters has not set up proper precautions for such fires.*

Response 1: Please note that Section 4.10 of the Draft EIS describes conditions in Central Maui, including a recognition of wildfires (“wildfires in Central Maui on fallow fields formerly in sugar cultivation, have generated intense smoke and dust over relatively short periods of time until they have been extinguished.”) and projects that the transition from sugarcane to diversified agriculture may affect air quality from an increase in equipment emissions and in the very short-term, from dust from uncultivated land. As explained in the Section 4.10 of the Draft EIS, the diversified agricultural activities in Central Maui will be subject to HAR, § 11-60.1-33, Fugitive Dust, which states, in part: “11-60.1-33(a): No person shall cause or permit visible fugitive dust to become airborne without taking reasonable precautions.” And, § 11-60.1-33(b): “...no person shall cause or permit the discharge of visible fugitive dust beyond the property lot line on which the fugitive dust originates.” Given the expanse of the agricultural fields in Central Maui, extra precaution must be exercised near its boundaries. Particularly in these areas, mitigation measures will include keeping fallow land to a minimum, using cover crops to minimize exposed soil and

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limiting vehicular speed during plowing activities and while traveling onsite. Also, water will be used to minimize dust during activities such as grading and grubbing, any gathered soil will be stabilized, any loading for soil will minimize the drop distance, and soil transport will use water or soil covering to control dust.

Comment 2: *Please inform me where in the DEIS you have described in detail how water from the proposed water lease will be transported, stored, pumped and used for the purpose of avoiding and fighting such fires and how the safety of Maui firefighters is guaranteed.*

Response 2: Please note that as described in Section 2.1 of the Draft EIS, the Proposed Action will allow for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water for uses described in the EIS.

Your comment regarding pumping and storage is unclear. We assume you are talking about the EMI Aqueduct System and the Central Maui Field Irrigation System. Section 3.1.1.1 of the Final EIS which has been corrected due to error in the Draft EIS as shown in pages 3-3 to 3-4 explains that the EMI Aqueduct System has six reservoirs that serve to supplement water delivery and the Central Maui Field Irrigation System has 35 major reservoirs. With regards to pumping, please see the table below, which has been added to Section 4.2.2 of the Final EIS as shown in page 4-75.

State Well No.	TMK Number	Installed Pump Capacity (MGD)	Typical Range of Chlorides (MG/L) from 2003 through 2014	CWRM Delineated Aquifer System
4825-001	(2) 3-8-004:001	20.448	225 to 350	Pā‘ia
5226-002	(2) 3-8-006:001	24.048	350 to 550	Kahului
5224-002	(2) 3-8-003:004	15.120	350 to 550	Pā‘ia
5323-001	(2) 3-8-001:006	20.016	No data	Pā‘ia
5424-001	(2) 3-8-001:007	5.760	400 to 700	Pā‘ia
5522-001	(2) 2-5-005:021	8.640	350 to 525	Pā‘ia
5422-001	(2) 2-5-005:054	10.080	350 to 525	Pā‘ia
5422-002	(2) 2-5-005:020	11.664	325 to 475	Pā‘ia
5321-001	(2) 2-5-005:019	30.240	400 to 1600	Pā‘ia
5520-001	(2) 2-7-004:032	10.080	900 to 1600	Ha‘ikū

Please note that the salinity levels fluctuate and therefore a range was provided.

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Regarding your comment that a map should depict the historical and prospective areas that can be irrigated using well water, the available brackish groundwater will be used similar to how it was in the past with regards to how the groundwater is applied as discussed in Section 2.1.4:

...brackish water wells that can supplement surface water to approximately 17,200 acres of the plantation at the lower elevations (CWRM D&O, FOF 738). These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739). This pump station was designed and built to be an emergency water source for the high-elevation fields in the event of extreme drought.

Please note that a figure has been produced to correspond with the above text in Section 2.1.4 of the Final EIS as shown in page 2-24.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: [Hirokawa, Ian C](#)
To: [Public Comment](#)
Subject: FW: Water Leases Maui and Kauai
Date: Thursday, November 7, 2019 5:02:52 PM
Attachments: [water1.docx](#)

From: Maui Horoscope <haiku.starlight@gmail.com>
Sent: Thursday, November 7, 2019 2:53 PM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Subject: Water Leases Maui and Kauai

Letter attached declaring BLNR Reject leases to AB,EMI, and KIUC

From: [Hirokawa, Ian C](#)
To: [Public Comment](#)
Subject: FW: corrected letter Maui /Kauai Water leases
Date: Thursday, November 7, 2019 5:03:37 PM
Attachments: [water1.docx](#)

From: Maui Horoscope <haiku.starlight@gmail.com>
Sent: Thursday, November 7, 2019 3:15 PM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Subject: corrected letter Maui /Kauai Water leases

Dear BLNR

Please refuse the request by Alexander and Baldwin, and Mahi Pono for any extension or continuation of any leases pertaining to the East Maui Area.

1. As you are aware, until East Maui is declared a Water Management Area by the State Water Commission, no water is legally transported to Central Maui until it is declared a Water Management Area.
2. Proper monitoring of stream levels in the 100 streams have not been done, started or completed. Only 4 streams are monitored, the most historical being Honopou Stream. This in itself should remove any possibility of future leases until water sources and levels are gathered.
3. Right to grow Taro has been destroyed by the destruction of the stream flow, the following growth within streams, that then creates so much debris that results flooding for the areas and the roadways along the stream. Taro is impacted by the low flow and the warming of the waters. Stream life must also be considered as well as near ocean water life.
4. The leases were created under hardship and under a temporary nature not intended for longterm and intensive use.
5. The ditches were built by enslaved and indentured servants, who were paid \$1 per day and then bought groceries from the AB store. This amounts to slavery and reparations must be made.
6. The original ditches did not consider the human, marine animal or plant life consequences or end results.
7. Leases are not intended to be permanent, and The State has every right to not renew the leases and tell the company to remove its water catchment systems and environmental destroyers. The State is Under charging for the current leases, \$9,000 a month for 25 million gallons per day , it is absolute thievery.

8. The EMI company took land via the mapping system, and has poorly maintained the ditch system using chemicals to kill “weeds”, without proper control.

AB would not have this request in, if they had not polluted the East Maui Aquafir, located at Hamakuapoko, where the applied chemicals, and the Feds shut the wells down. There are barely 20 years left on the filter systems as part of the Dow chemical settlement.

The Hawaiian people deserve the right to live above the right to a hotel to wash towels.

Say NO to EMI, AB and HCSC and Mahi Pono, for any future leases and return to land to the Hawaiian Trust. Streams, life, culture food sources through Taro and agricultural cultivation is vital , important and vital to a community. Small farmers will be burdened by the DLNR rules and will never be able to compete with corporate farming to necessitate needs and water use.

KIUC’s EA does not meet State requirements for a lease application. There are significant spiritual, cultural, environmental and public trust impacts that can only be addressed with an EIS.

Examples:

Residents had to abandon Taro fields on Powerhouse Rd because the stream ran dry.

Water was sold to downstream farmers by the diverter.

Susan Case of DLNR must be removed for showing favoritism to her family Case member.

Water was retained by diverter and placed in a pond, high in bauxite, which is above standard levels and then resold to downstream farmers.

The lease is not proper for valuation or Public Use Trust Doctrine.

- KIUC receipt of federal funds in 2017 for system upgrades requires an EIS for future lease approval
- KIUC’s use of the water is consumptive, meaning it is not returned to the stream of origin. Any consumptive use of water within conservation district land requires legislative approval.

- More than a dozen streams are diverted out of the Wailua watershed. But, Wai`ale`ale and Waikoko Streams are the only two streams accessible to the public; they are located in the Lihue-Koloa Forest Reserve. Proper monitoring of all the streams must be implemented for proper outflow patterns.

The stream above the diversion is classified by the Environmental Protection Agency as federally protected critical habitat for the endangered endemic Newcomb's Snail which requires an EIS.

KIUC is asking for 30 million gallons per day (MGD) with the stream getting 3.5 MGD, or less in dry conditions.

- The impacts of climate change is not addressed in the EA. What will rainfall patterns and stream flows be like 50-65 years from now?

We have been in a drought for the past 6 months and with 1 Billion people on Earth by 2039 We must protect the Public Water Trust say NO to this unlawful request for a lease that was originally granted under hardship and with deceit and false pretenses.

Thank you

Christina Hemming
8085720336 Haiku Maui Hawaii



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September 3, 2021

Ms. Christina Hemming
Haiku.starlight@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Hemming:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.¹

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please refuse the request by Alexander and Baldwin, and Mahi Pono for any extension or continuation of any leases pertaining to the East Maui Area.*

1. As you are aware, until East Maui is declared a Water Management Area by the State Water Commission, no water is legally transported to Central Maui until it is declared a Water Management Area.

Response 1: Your initial comment is acknowledged. However, for clarification, please note that the Board of Land and Natural Resources' (BLNR) decision on the proposed Water Lease is not the matter at hand. Any decision on the Water Lease will take place only after the EIS process is completed.

¹ Note, you submitted two comment letters on November 7, 2019. One by email of 2:53 pm, and one by email of 3:15 pm, which you named "corrected letter Maui/Kauai Water leases." Because the 3:15 pm email is designated as the "corrected" letter, that is the letter we are responding to and included in the Final EIS.

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We respectfully disagree with your comment. Although it is not clear from your comment, we assume you are referring to Hawai'i Revised Statutes (HRS) § 174C-49, which provides conditions necessary before the Commission on Water Resource Management (CWRM) can issue a water use permit in a designated water management area, and specifically subsection (c) of that law, which addresses CWRM's authority to allow a water use permit holder to transport and use surface or groundwater beyond overlying land or outside the watershed from which it is taken. This law is not applicable to the proposed Water Lease. The License Area is not designated as a water management area. See <https://dlnr.hawaii.gov/cwrm/surfacewater/swma/>.

There is no requirement under HRS Chapter 174C or HRS Chapter 171 that requires the CWRM to designate a water management area before the BLNR can issue the proposed Water Lease.

HRS § 174C-49(c), which pertains to the issuance of permits in designated water management area, states:

The common law of the State to the contrary notwithstanding, the commission shall allow the holder of a use permit to transport and use surface or groundwater beyond overlying land or outside the watershed from which it is taken if the commission determines that such transport and use are consistent with the public interest and the general plans and land use policies of the State and counties.

We believe this clause was written to ensure the ability to transport water out of its lands of origin, for use elsewhere, even in the more restricted situation of a designated water management area. It does not preclude the transport of water in areas not designated as water management areas. Of note, there are systems across the Hawaiian islands that rely on transporting water out of their lands of origin to serve their users — many of them are County water systems that rely on groundwater wells to supply large service areas, beyond the lands on which the groundwater wells are located.

Comment 2: *Proper monitoring of stream levels in the 100 streams have not been done, started or completed. Only 4 streams are monitored, the most historical being Honopou Stream. This in itself should remove any possibility of future leases until water sources and levels are gathered.*

Response 2: Please note that there are not 100 streams diverted by the EMI Aqueduct System. Contrary to your statement that there are "hundreds" of streams, the total number of streams/tributaries within the License Area that could be diverted under the Proposed Action is

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25 out of the 36 total streams (which includes its tributaries) as indicated by Table 1-3 in the Final EIS.

Regarding your comments about only 4 streams being monitored, EMI has gages located in several locations across the License Area. These gages only measure flows in the ditches. The establishment of in-stream gage stations typically fall under the responsibility of CWRM or the U.S Geological Survey (USGS) due to the highly technical knowledge required to establish control points to accurately measure streamflow. Similarly, it is not feasible to provide total diversion amounts by License Area or on a stream-by-stream basis. While the USGS used to have gauge stations at each of the License Area boundaries, due to cost cutting by the USGS, most of those gauge stations were removed, except for those at the Honopou boundary of the License Area. However, what is most important relative to stream protection is not how much water is diverted from a stream, but rather knowing that the IIFS is met, which does not require measurement of every stream. Moreover, CWRM's prior efforts to measure water flows for specific purposes involved the installation of water gages in certain streams, but such efforts proved entirely impractical due to the occurrences of flash flood conditions in the streams, which caused gage stations to wash away. As noted in the CWRM D&O, in addition to the measurements EMI takes on its ditch, at Honopou stream and Maliko gulch, there are a select few other known locations of gaging stations throughout the License Area, however, for the purpose of measuring the aggregate flow from entire License Area, the Honopou Stream measurement reading was used in the Draft EIS

Comment 3: *Right to grow Taro has been destroyed by the destruction of the stream flow, the following growth within streams, that then creates so much debris that results flooding for the areas and the roadways along the stream. Taro is impacted by the low flow and the warming of the waters. Stream life must also be considered as well as near ocean water life.*

Response 3: Your comment is acknowledged, however, it is unclear which streams you are referring to as your comment does not specifically identify which streams are having adverse impact to taro growing due to low flow and warming waters. However, as discussed in the Final EIS Section 1.3.4, under the CWRM D&O, CWRM ordered full restoration of water flow to streams that supply water to active taro farming areas. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi 'a/Waiānu, Kualani/Hāmau, and

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Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas,

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not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Please note that the Cultural Impact Assessment (CIA) prepared by Cultural Surveys Hawai‘i (CSH) and Section 4.6 of the Final EIS has been updated to include a reformatting of the identified impacts, including those specifically related to taro farming and also identifies recommended mitigation measures as shown in pages 4-239 to 4-252.

Regarding your comment about stream life, please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. The initial conclusion, as presented in Section 4.2.1 of the Draft EIS, was that “under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition.” However, please note that Section 4.2.1 of the Final EIS has been revised, and the HSHEP model report provided as Appendix A has been clarified as shown pages 4-56 to 4-67. Hence, under the Proposed Action, the number of HU within the entire License Area is decreased by an estimated 36.1% from a theoretical Natural Condition (i.e., a condition where no streams are diverted). However, under the Proposed Action, the number of HU is increased by approximately 27.4% in comparison to the Full Diversion condition. Habitat units (HU), as defined by the HSHEP report (Appendix A), as relative measures of stream habitat where each It is important to recognize that the accumulation of HU

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for amphidromous species is additive, meaning that a single unit of stream may have a total HU in excess of the stream area quantified. In other words, if HU for multiple non-competitive species in a given area are added together, the combined HU could be greater than the area. This is important when considering the total HU for all eight amphidromous species in a stream as the total HU for all eight species may be greater than the total stream area.

Regarding your comment about “near ocean water life,” impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species (‘O‘opu naniha (*Stenogobius hawaiiensis*), ‘O‘opu akupa (*Eleotris sandvicensis*) and ‘Ōpae ‘oeha‘a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

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The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83.

Comment 4: *The leases were created under hardship and under a temporary nature not intended for longterm and intensive use.*

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Response 4: Your comment regarding leases being created under hardship and under a temporary nature is unclear. However, pursuant to HRS § 171-58, BLNR may issue a long-term Water Lease at public auction. Under HRS § 171-36, leases of public lands can be for terms up to 65 years, and under HRS § 171-1, "land" is defined to mean "all interests therein and natural resources including water, minerals, and all such things connected with land, unless otherwise expressly provided." Therefore, State leases are intended to be long-term. As explained in Section 1.3 of the EIS, the Applicant requested a long-term water lease from the state in 2001. However, due to lengthy legal proceedings, that request has yet to be acted upon. An EIS is required before BLNR can consider issuing the proposed Water Lease. Section 1.4 of the Draft EIS explains that in 2016, the BLNR ordered A&B to prepare an EIS for the proposed Water Lease.

Regarding your comment about "intensive use" as explained in Draft EIS Section 2.1.2, the License Area, has already been affected by increased stream flows resulting from less offstream diversions due to the closure of sugar operations in December 2016. As of October 2020, the EMI Aqueduct System was diverting an average of 23.3 mgd. As a result, very little surface stream water is currently being diverted relative to what would be allowed should the Water Lease be awarded per the Proposed Action. However, the amount of water that may be diverted should the Water Lease be issued is substantially less than the amount that was diverted during normal sugar production. For example, in 2006 it is estimated that the EMI Aqueduct System delivered approximately 156.69 mgd at Māliko Gulch, whereas under the CWRM D&O, it is estimated that the delivery at Māliko Gulch will be approximately 92.32 mgd (Akinaka, 2019). Hence, significantly less water will be diverted due to the return of stream water ordered under the CWRM D&O. Accordingly, considerably less East Maui surface water will be applied to the Central Maui agricultural fields than was applied in the past when these fields were cultivated in sugarcane.

Comment 5: *The ditches were built by enslaved and indentured servants, who were paid \$1 per day and then bought groceries from the AB store. This amounts to slavery and reparations must be made.*

Response 5: We respectfully disagree with your comment. The ditches were not built by enslaved and indentured servants. They were built by immigrant workers who migrated to Hawai'i seeking work and income on the sugar plantations. Of note, these immigrant workers were provided housing and other services by the plantations. The archeological literature review and field inspection (LRFI) report included as Appendix E to the EIS documents the 22-mile long Lowrie Ditch was engineered by a foreign expert, E. L. Van Der Neillen, and constructed by Japanese laborers.

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The LRFI also reports that, in a 2006 study titled *He Mo'olelo No Maui Hikina - Kalialinui I Uka A Me Nā 'Āina O Lalo: A Cultural-Historical Study of East Maui - The Uplands of Kalialinui, and the Lands that Lie Below, Island of Maui "The Waikamoi Preserve"*, Maly and Maly note that, while some in the community have stated that the waters of East Maui were taken without permission, construction of the early ditch system was approved under the authority of King David Kalākaua per Civil Code Section 42 (Kingdom of Hawai'i 1859:15), with a condition of the original lease stating that water rights of native tenants of the land be protected.

The LRFI also recites details from the Hawaiian Annual and Almanac for 1878, confirming that the EMI Aqueduct System was built by employed men, not enslaved and indentured servants, who were provided food and shelter. "The digging of the ditch was a work of no small magnitude. A large gang of men, sometimes numbering two hundred, was employed in the work, and the providing of food, shelter, tools, etc., was equal to the care of a regiment of soldiers on the march." Based upon the historical facts, reparations are therefore not applicable here.

Comment 6: *The original ditches did not consider the human, marine animal or plant life consequences or end results.*

Response 6: It is unknown whether environmental factors were taken into consideration in the development of the EMI Aqueduct System more than 100 years ago and there was no legal requirement to do so at that time. Although it is not scientifically possible to fully document impacts that first took place more than a century ago as pre-diversion data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui, and the LRFI (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families.

As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS.

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The Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System, and has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats.

As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS.

The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts.

Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century and have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. As explained in Sections 4.17 and 4.18 of the Final EIS (updated from Sections 4.16 and 4.17 of the Draft EIS), an assessment of cumulative impacts is provided in the EIS and the technical studies that were prepared to support the EIS. See pages 4-331 to 4-336 of the Final EIS.

Comment 7: *Leases are not intended to be permanent, and The State has every right to not renew the leases and tell the company to remove its water catchment systems and environmental destroyers. The State is Under charging for the current leases, \$9,000 a month for 25 million gallons per day, it is absolute thievery.*

Response 7: The issuance of the Water Lease, as well as its term, is at the discretion of the BLNR. Moreover, please note that the Water Lease rent rate will be determined by the BLNR, and that an appraisal will be conducted to guide their decision. Also, please note that your cited lease rent for the water is incorrect. As discussed in Section 4.7.3 of the Draft EIS, since the ultimate lease rent to be charged by the State is currently unknown, for the purposes of the economic and fiscal impact analyses in the Draft EIS, a projected Water Lease payment was calculated based on the equivalent per unit cost under the 2019 revocable permit. That rate was

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\$230,964.24 which equates to over \$19,000 a month for approximately 16.8 mgd diverted from the License Area under the revocable permit. The Final EIS includes the rental charge under the 2021 revocable permits, which was obtained after publication of the Draft EIS, of \$238,362 which equates to nearly \$20,000 a month. See pages 4-277 and 4-283 of the Final EIS.

Comment 8: *The EMI Company took land via the mapping system, and has poorly maintained the ditch system using chemicals to kill “weeds”, without proper control.*

Response 8: Your comment about EMI taking land via the mapping system is unclear. Section 1.3.2 of the Draft EIS explains that the Kingdom of Hawai‘i granted A&B and their partners a license to divert water following the completion of the first ditch. However, please note that land title research is not within the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The potential environmental impacts of the proposed Water Lease are discussed in Chapter 4 of the EIS.

EMI has continually maintained the EMI Aqueduct System. It evaluates areas of the EMI Aqueduct System regularly to identify where maintenance / repair activities are necessary and adds them to a list of maintenance projects. Moreover, in response to comments received on the Draft EIS, EMI staff have been conducting sweeps to locate and remove unnecessary debris from the License Area. The “maintenance and repair” under the Proposed Action involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System.

Regarding your comment about the use of chemicals to kill weeds without proper control, we respectfully disagree with this. As noted in Section 4.12 of the Draft EIS, pesticides and herbicides are used in compliance with County, State and Federal regulations in connection with the maintenance of the EMI Aqueduct System and will continue to do so under the Proposed Action and associated alternatives. Moreover, in January of 2020 EMI committed to foregoing the use of Round-Up to maintain the EMI Aqueduct System and any trails and access roads. See

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pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations of the Final EIS.

As it relates to the Central Maui agricultural fields, as described in the EIS at Section 4.12 and elsewhere in the EIS, the Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of agricultural chemicals. It should be noted that since January 2020 Mahi Pono has committed to foregoing the use of Round-Up and other glyphosate based products within the Central Maui agricultural fields. See pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations of the Final EIS.

Comment 9: *AB would not have this request in, if they had not polluted the East Maui Aquifer, located at Hamakuapoko, where the applied chemicals, and the Feds shut the wells down. There are barely 20 years left on the filter systems as part of the Dow chemical settlement.*

Response 9: We respectfully disagree with your comment regarding the purpose for the request of a long-term Water Lease. As described in Section 1.1 of the Draft EIS, the purpose of the Water Lease is to:

...enable the Board of Land and Natural Resources (BLNR)-awarded lessee the right, privilege and authority to enter and go upon State-owned lands for the purposes of developing, diverting, transporting and using government-owned waters. The requested Water Lease would allow the use of government-owned waters from the License Area (approximately 33,000 acres which includes lands within Nāhiku, Ke'anae, Honomanū, and Huelo) through the East Maui Irrigation Company, LLC (EMI) Aqueduct System. Use of that surface water would allow the continued provision of water to enable approximately 30,000 acres of farmland in Central Maui to remain in agriculture. The Water Lease would also allow the continuation of a supply of water to the County of Maui Department of Water Supply (MDWS), which in turn provides water for domestic and agricultural water needs in Upcountry Maui, including agricultural users at Kula Agriculture Park (KAP), and the planned 262-acre KAP expansion, . . .

Regarding your comment about pollution of the East Maui Aquifer at Hamakuapoko, if you are referring to the wells that were drilled in Hamakuapoko, please note that those wells were drilled by the County of Maui Department of Water Supply (MDWS). They are the MDWS' wells, not

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A&B's. The wells are in fact not shut down, and do provide water to the MDWS Upcountry Maui Water Service Area under certain circumstances, as discussed in Section 2.1.3.1 of the EIS.

We acknowledge your comment regarding the Dow chemical settlement and that there are 20 years left on the filter systems. However, please note that this is not within the scope of the EIS. The referenced wells are owned and operated by the MDWS. Further, as discussed in Section 2.1.3.1 of the EIS, the chemicals found in the Hamakuapoko wells were from pineapple cultivation. A&B did not cultivate pineapple in Upcountry Maui.

Comment 10: *The Hawaiian people deserve the right to live above the right to a hotel to wash towels.*

Response 10: Your comment regarding Hawaiian people deserving the right to live above the right to a hotel to wash towels is unclear. The proposed Water Lease is not connected to the development of any hotels. Use of that surface water would allow the continued provision of water to enable approximately 30,000 acres of farmland in Central Maui to continue to fully transition to a diversified agricultural operation, and would also allow the continuation of a supply of water to the County of Maui Department of Water Supply (MDWS), which in turn provides water for domestic and agricultural water needs in Upcountry Maui, including agricultural users at Kula Agriculture Park (KAP), and the planned 262-acre KAP expansion, as well as for the Nāhiku community, and, for an interim period, to continue the provision of water for the historic uses discussed in Section 4.16 of the Final EIS as shown in page 4-331. Please note that cultural impacts to Native Hawaiian traditional and customary practices are discussed within Section 4.6 of the EIS.

Comment 11: *Say NO to EMI, AB and HCSC and Mahi Pono, for any future leases and return to land to the Hawaiian Trust. Streams, life, culture food sources through Taro and agricultural cultivation is vital , important and vital to a community. Small farmers will be burdened by the DLNR rules and will never be able to compete with corporate farming to necessitate needs and water use.*

Response 11: We acknowledge your comments. With respect to the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes

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and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts.

The Draft EIS also included and relied upon nine technical studies, some of which have been updated for clarity and/or based upon comments received on the Draft EIS. Appendix A, Assessment of The Environmental Impacts of Stream Diversions on 33 East Maui Streams Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model; Appendix B, East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry; Appendix C, Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease; Appendix D, Historical Structure Assessment (HAS) East Maui Aqueduct System; Appendix E, Archaeological Literature Review and Field Inspection (LRFI) for the Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas; Appendix F, Cultural Impact Assessment (CIA) for the Nāhiku, Ke‘anae, Honomanū and Huelo License Areas; Appendix G, A&B Proposed Water Lease for the Nāhiku, Ke‘anae, Huelo, and Honomanū Social Impact Assessment (SIA); Appendix H, Economic and Fiscal Impact Study Proposed Water Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Area; and Appendix I, East Maui Water Lease: Agricultural and Related Economic Impacts.

As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area in East Maui. These impacts are related to various aspects of the natural environment. For stream habitat impacts, there will be a reduction from natural flow conditions, which can be mitigated by adjustments in diversions to minimize entrainment or increases in stream flow. For native terrestrial flora and fauna resources, as well as historic and archeological resource, there is anticipated to be impacts from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; impacts to cultural resources and practices due to access or restriction of access can be mitigated by a myriad of recommendations proposed by CSH as discussed in Section 4.6; and community concerns and perceptions as discussed in Section 4.7.2 of the EIS can be mitigated by further public outreach and consultation.

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Your comment about the difficulties small farmers face due to DLNR rules is unclear, but we note that under the Proposed Action, the Mahi Pono farm plan, which will be implemented on private lands (not under DLNR control), includes 800 acres for community farms.

Comment 12: KIUC's EA does not meet State requirements for a lease application. There are significant spiritual, cultural, environmental and public trust impacts that can only be addressed with an EIS.

Examples:

Residents had to abandon Taro fields on Powerhouse Rd because the stream ran dry.

Water was sold to downstream farmers by the diverter.

Susan Case of DLNR must be removed for showing favoritism to her family Case member.

Water was retained by diverter and placed in a pond, high in bauxite, which is above standard levels and then resold to downstream farmers.

The lease is not proper for valuation or Public Use Trust Doctrine.

- *KIUC receipt of federal funds in 2017 for system upgrades requires an EIS for future lease approval*
- *KIUC's use of the water is consumptive, meaning it is not returned to the stream of origin. Any consumptive use of water within conservation district land requires legislative approval.*
- *More than a dozen streams are diverted out of the Wailua watershed. But, Wai`ale`ale and Waikoko Streams are the only two streams accessible to the public; they are located in the Lihue-Koloa Forest Reserve. Proper monitoring of all the streams must be implemented for proper outflow patterns.*

The stream above the diversion is classified by the Environmental Protection Agency as federally protected critical habitat for the endangered endemic Newcomb's Snail which requires an EIS.

KIUC is asking for 30 million gallons per day (MGD) with the stream getting 3.5 MGD, or less in dry conditions.

- *The impacts of climate change is not addressed in the EA. What will rainfall patterns and stream flows be like 50-65 years from now?*

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Response 12: Please note that the KIUC EA is not within the scope of assessment of this EIS and is subject to its own environmental compliance and documentation. This EIS assesses the potential impacts of the proposed Water Lease of the identified East Maui streams.

Comment 13: *We have been in a drought for the past 6 months and with 1 Billion people on Earth by 2039 We must protect the Public Water Trust say NO to this unlawful request for a lease that was originally granted under hardship and with deceit and false pretenses.*

Response 13: We acknowledge your comments. Climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is therefore extremely energy efficient. The Draft EIS also notes that the EMI Aqueduct System supplies water to two hydroelectric facilities, thereby providing renewable energy from a non-consumptive use of water. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown in pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

While the exact nature of how the climate will impact East Maui is unknown, it is expected that more intense, episodic periods of rainfall will occur. However, it is also possible that climate change may decrease the amount of rainfall within the License Area, which could decrease the

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amount of stream flow. However, compliance with the restored streamflow standards mandated under the CWRM D&O will be required irrespective of the future impacts of climate change.

Regarding your comment about the future population, Section 4.7.1 of the Draft EIS, as updated in the Final EIS, describes the population and demographics of East, Upcountry, and Central Maui as well as anticipated projections. With respect to East Maui, Section 4.7.1 of the EIS explains that the region had a population of 11,890 residents in 2015, and that population is expected to increase, primarily within the Pā'ia-Ha'ikū Community Plan area, to 12,321 by 2035.

Regarding Upcountry Maui, the population as of 2017 was some 37,128 residents and 14,178 households within the Upcountry Maui Water System Service Area. The County of Maui projects those numbers to increase to 44,000 by 2035.

Regarding the Central Maui agricultural fields assessed under this EIS, no residences are located within the agricultural fields and no housing or other residential development is proposed in Central Maui under this EIS.

No significant impacts are anticipated as a result of the Proposed Action with regards to population and demographics in each of three regions. Conversely, it is anticipated that the No Action alternative would have an adverse impact on populations as it is assumed that the EMI Aqueduct System would not continue to deliver water to MDWS, which would have the effect of reducing supply to both MDWS customers in Upcountry Maui and in Nāhiku.

With respect to your comment about the "Public Water Trust" we acknowledge that the Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawaii constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action, as shown in pages 1-25 to 1-27. Moreover, to clarify, finalization of this EIS does not result in issuance of the Water

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Lease. Any decision on the Water Lease auction and issuance of the Water Lease would happen only after completion of this EIS, and through a separate process before the BLNR.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.² Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

² Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: [Christine Davis](#)
To: ian.c.hirokawa@hawaii.gov; [Public Comment](#)
Subject: Comments for D EIS
Date: Wednesday, November 6, 2019 1:15:19 PM

To Whom it May Concern,

Ive been watching this unfold since the introduction of HB2501/SB 3001, which upon Ige's refusal to veto it in spite of volumes of public outcry, circumvented state court rulings that had determined A&B illegally diverted water for the then past 15 years. It boggles my mind that nearly 4 years later, how many hours of testimony given over the course of many legal shenanigans to continue this violation of the public trust and now a California company beholden to Canadian pension fund holders and a real estate company stand to be handed even more stolen water than the prior plantation crop of very water intensive sugarcane.

The state continually fails protecting the public's trust and rights by killing how many opu'u recently, not enforcing the court order against Wailuku Water Company to restore more water, allowing rocks to be removed from Iao after the serious flood, promoting over tourism without investing in infrastructure to keep the visitors safe, windmills, telescopes, I can go on but I only have until Nov 7th and Hana Library has only had its copy for about 2 weeks, a 2,700 page document! Permit an extension of the EIS comments, just withdraw this one, allow Hana folks a fair chance to process this info and make educated comments, then resubmit this EIS as is, that is more fair.

Ive read and heard countless testimonies from marine biologists and neighbors stating the observed harms to the aquatic life during diversions and enjoying the recent bounties of aquatic life when the diversions were finally released and mauka to makai connectivity restored again. Read their testimonies for more

details.

Why will this lease allow Mahi Pono and A&B the right to use or traverse over private property that borders a stream, which currently may not be diverted yet?

30 year lease is way too long, cmon now...see what happens after 5 years then give a new lease which maybe longer if they were good stewards.

Why can get they any lease without a watershed plan?

Why do they get a lease before DHHL folks in Keanae and Hana don't even have a plan for their own water? Address their needs first, legally you were supposed to already.

Make sure the kalo farmers and lineal descendants get their water needs met first before this California company does.

Why so much water being handed over without any evidence of needing? Just take what you need we are on an island...20 mpd should be plenty to start with and come up with your own sources of water like most us other farmers have to. And charge them market rate too.

The public has stated loud and clear, repeatedly, go ask the legislative staff how many phone calls and emails their offices got every step of the way, reminding them that water is a public right and the state exists to protect the public and the public rights, not create special rules for a real estate company and a Canadian pension fund, which is who Mahi Pono answers to, not Maui tax payers. A good compromise until the water rights are returned to the rightful owners, is to have the county be in charge and have the county lease the water.

I hope I properly explained my request for an extension for folks to continuing commenting on this very lengthy EIS and my request the state reject or amend the lease application for a less damaging impact on our islands health. And my request the county lease the water for now. I tried to be as brief as possible, mahalo for your time.

Christine Davis
Kawaipapa, Hana, Maui



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September 3, 2021

Ms. Christine Davis
kawaipapanursery@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Davis:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Ive been watching this unfold since the introduction of HB2501/SB 3001, which upon Ige's refusal to veto it in spite of volumes of public outcry, circumvented state court rulings that had determined A&B illegally diverted water for the then past 15 years. It boggles my mind that nearly 4 years later, how many hours of testimony given over the course of many legal shenanigans to continue this violation of the public trust and now a California company beholden to Canadian pension fund holders and a real estate company stand to be handed even more stolen water than the prior plantation crop of very water intensive sugarcane.*

Response 1: We acknowledge your comments and understand that you have been following this particularly situation for quite some time now. With regards to your comment about the public trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B’s 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the

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requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

With regards to your comment about Mahi Pono being handed more water than prior to sugarcane operations, please note that this is not true. As discussed in Draft EIS Section 2.1.2 (East Maui/License Area) and 2.1.4 (Central Maui Field System), the long-term average delivery of water by the EMI Aqueduct System up until 1986 had been approximately 165 mgd (prior to any use of water by the MDWS or HC&S on the agricultural fields). This measurement was taken at Māliko Gulch. Under the Proposed Action, it is estimated that approximately 87.95 mgd will be diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Comment 2: *The state continually fails protecting the public's trust and rights by killing how many opu'u recently, not enforcing the court order against Wailuku Water Company to restore more water, allowing rocks to be removed from Iao after the serious flood, promoting over tourism without investing in infrastructure to keep the visitors safe, windmills, telescopes,...*

Response 2: With regards to you comment about public trust, as noted in Response #1 above, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

With regards to the Wailuku Water Company, removing rocks being removed from Iao, and investing in infrastructure, please note that these issues are not within scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'ānae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing

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EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 3: *...I can go on but I only have until Nov 7th and Hana Library has only had its copy for about 2 weeks, a 2,700 page document! Permit an extension of the EIS comments, just withdraw this one, allow Hana folks a fair chance to process this info and make educated comments, then resubmit this EIS as is, that is more fair.*

Response 3: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 4: *Ive read and heard countless testimonies from marine biologists and neighbors stating the observed harms to the aquatic life during diversions and enjoying the recent bounties of aquatic life when the diversions were finally released and mauka to makai connectivity restored again. Read their testimonies for more details.*

Response 4: We acknowledge your comments. Please note that many people at the EISPN public scoping meetings on February 22nd and 23rd, 2017 testified noting positive impacts seen from increased stream flow resulting from the cessation of sugar operations, please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See page 4-168 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. This is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSHEP model estimated that approximately 79.8% of total HU would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected under the No Action alternative.

Comment 5: *Why will this lease allow Mahi Pono and A&B the right to use or traverse over private property that borders a stream, which currently may not be diverted yet?*

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Response 5: Your comments are unclear. Please note that nowhere in the EIS is it stated that Mahi Pono or EMI would traverse over private property to divert stream water. As noted in Response #2 above, the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas, which are owned by the State, for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS.

Comment 6: *30 year lease is way too long, cmon now...see what happens after 5 years then give a new lease which maybe longer if they were good stewards.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui,

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amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *Why can get they any lease without a watershed plan?*

Response 7: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Comment 8: *Why do they get a lease before DHHL folks in Keanae and Hana don't even have a plan for their own water? Address their needs first, legally you were supposed to already.*

Response 8: Specific information regarding the Department of Hawaiian Home Lands' (DHHL) future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

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The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown in pages 2-4 to 2-7. As explained in pages 2-4 to 2-7 of the Final EIS, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water, CWRM could act on a reservation request related to a proposed lease.

As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the Department of Land and Natural Resources' (DLNR) Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

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While Mahi Pono's current farm plan assumes the full use of the water that can be diverted from East Maui streams after compliance with the CWRM D&O, Mahi Pono will be obligated to reduce elements of its farm plan, and thus the availability of crop, to accommodate the permanent reduction in available water resulting from DHHL's allocation. The Reduced Water Volume alternative described in Chapter 3 of the EIS provides an assessment of the impacts of less water being made available for the Proposed Action, including Maui Pono farm plan in the Central Maui agricultural fields. Specifically, consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

You are correct that Section 2.1.1 of the Draft EIS stated, with respect to the DHHL reservation, that "*Until that reservation is physically claimed, however, it will be available for use by the lessee.*" That statement has been clarified in the Final EIS as shown in pages 2-4 to 2-7, as it is uncertain whether the DHHL reservation amount would be available to the lessee until such time as it is needed by DHHL. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

Please note that as discussed in Section 2.1.2 of the Draft EIS, under the Proposed Action, at full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd will be diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Comment 9: *Make sure the kalo farmers and lineal descendants get their water needs met first before this California company does.*

Response 9: We acknowledge your comments. please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water

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needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for taro were identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown in pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be

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minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in the included pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 10: *Why so much water being handed over without any evidence of needing? Just take what you need we are on an island...20 mpd should be plenty to start with and come up with your own sources of water like most us other farmers have to. And charge them market rate too.*

Response 10: Please note that the Proposed Action is requesting the maximum amount of water available after compliance with the CWRM D&O to divert for uses described in the EIS which is estimated to be approximately 88 mgd from the License Area. However, please note that Section 2.1.4 of the Final EIS has been revised to reflect Mahi Pono's current and near-term expected water use as shown in pages 2-30 and 2-32, which details average water being diverted from East Maui streams through the EMI Aqueduct System and how that water will be used. It important to note that as with any agricultural project of this scale, actual water usage varies over time, and

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will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

Although the Proposed Action will divert more water than under current conditions and when compared to the amount of water being diverted immediately prior to the cessation of sugarcane operations, the Proposed Action is not anticipated to result in significant adverse impacts as discussed throughout Chapter 4. The Proposed Action cumulatively will result in the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4 albeit to a lesser extent and conditions are not anticipated to significantly change under the Proposed Action.

Comment 11: *The public has stated loud and clear, repeatedly, go ask the legislative staff how many phone calls and emails their offices got every step of the way, reminding them that water is a public right and the state exists to protect the public and the public rights, not create special rules for a real estate company and a Canadian pension fund, which is who Mahi Pono answers to, not Maui tax payers. A good compromise until the water rights are returned to the rightful owners, is to have the county be in charge and have the county lease the water.*

Response 11: We acknowledge your comments. Please note that the Applicant will comply with applicable regulatory requirements.

Comment 12: *I hope I properly explained my request for an extension for folks to continuing commenting on this very lengthy EIS and my request the state reject or amend the lease application for a less damaging impact on our islands health. And my request the county lease the water for now. I tried to be as brief as possible, mahalo for your time.*

Response 12: We acknowledge your comments. With regards to your request for an extension, as noted in Response #3, note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

With regards to your comment about the County leasing the water, please note that Section 3.1.2 of the Draft EIS contemplates alternative ownership of the EMI Aqueduct System which has been supplemented based on the County's TIG Report as shown in pages 3-19 to 3-20. As

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discussed in both the Draft EIS and the Final EIS, this alternative continues to appear speculative and not consistent with the objectives of the Proposed Action.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: treetrail808@everyactioncustom.com on behalf of [Christopher Kasak](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 11, 2019 9:43:03 PM

Dear Mr. Matsukawa,

A&B's proposal to further divert the streams of East Maui is abominable, par for their course, as is BLNR's sycophantic capitulation in carrying their baseline water... crystallizing in this mockery Draft(neglect to mention of)Environmental Impact Study in corporatacracy. Your DEIS is a shallow and transparent cesspool, predictably lacking in depth and due diligence, composed by dilettantes and petite monstrous bourgeoisie due swift and just response at the end of cleansing fire.

#HowDareYou?

#NuffAlready! East Maui streams should not be diverted for agriculture (and especially not to these criminal cabals with wanton disregard for all but their silken lined pocketbooks bottom lines, while our streams die dry and our watersheds drown in the silt, cattle crap, and toxic runoff from their decades of dirty dealing) in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

This is abundantly clear under the Hawaii State Constitution and the UNDRIP. Waters are only muddied by the under regulated flow of special interest monies and powers.

Thank you for this DEIS that makes it so clear why BLNR and the hands that feed y'all your steaming plates of trash needs to be destroyed. We will not allow this Hewa to continue.

Sincerely,
Christopher Kasak
131 Hanamu Rd Makawao, HI 96768-9005
treetrail808@gmail.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Mr. Christopher Kasak
131 Hanamu Road
Makawao, HI 96768
Treetrail808@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Kasak:

Thank you for comments dated October 11, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *A&B’s proposal to further divert the streams of East Maui is abominable, par for their course, as is BLNR’s sycophantic capitulation in carrying their baseline water... crystallizing in this mockery Draft(neglect to mention of)Environmental Impact Study in corporatacracy. Your DEIS is a shallow and transparent cesspool, predictably lacking in depth and due diligence, composed by dilettantes and petite monstrous bourgeoisie due swift and just response at the end of cleansing fire.*

#HowDareYou?

#NuffAlready!

Response 1: We acknowledge your comments however, we respectfully disagree that the EIS is ‘a shallow and transparent cesspool.’ The Draft EIS included a "Content Checklist" identifying each element under HAR § 11-200-17 and where within the text of the Draft EIS information on each particular element could be found. Please note that the Content Checklist has been updated

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based on updated discussions and additions added to the Final EIS as shown subsequently after the front cover.

Comment 2: *East Maui streams should not be diverted for agriculture (and especially not to these criminal cabals with wanton disregard for all but their silken lined pocketbooks bottom lines, while our streams die dry and our watersheds drown in the silt, cattle crap, and toxic runoff from their decades of dirty dealing) in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 2: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was

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ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 3: *This is abundantly clear under the Hawaii State Constitution and the UNDRIP. Waters are only muddied by the under regulated flow of special interest monies and powers.*

Thank you for this DEIS that makes it so clear why BLNR and the hands that feed y'all your steaming plates of trash needs to be destroyed. We will not allow this Hewa to continue.

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Response 3: We acknowledge your comments. Thank you for your participation in this EIS process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: cody nemet <kokoroots@gmail.com>
Sent: Wednesday, November 6, 2019 11:31 PM
To: ian.c.hiokawa@hawaii.gov; Public Comment
Subject: DEIS Water Lease

To Mr. Earl Matsukawa,

THIS EIS IS NOT COMPLETE

Aloha nō, Please accept my comments and concerns regarding the EIS draft(Water Lease).

I am currently in land preservation, a kalo farmer, fisherman, gatherer and cultural practitioner. Wai affects every part of my daily life and I feel that every scope of management must be met in this EIS for the purposes of safeguarding life in the land and it's inhabitants. Although the EIS was very extensive, It is not complete and I am glad that our hui was able to work together in understanding it.

NOT ENOUGH INPUT FROM THOSE WHO UTILIZE STREAMS AND SPEAK FOR THOSE WITH NO VOICE.

There are major differences in productivity within the last few years. I have seen first hand how a once dry river bed, to a thriving stream can bring life and harmony to our watersheds, farmers, fishermen, and marine life. When HC&S released the water back to the 10 streams in East Maui a few years ago, a circle of life began to show itself. More water for a sustainable watershed, more for farmers, more water for 'Opae and 'O'opu to swim up river and down to the ocean, more fresh runoff to feed our reef systems which bring in Akule for our fishermen and more wai to feed our aquifers, and wetlands. The EIS draft has not brought up these important points.

SAFETY

Stream flow is important in the aspect of safety. I have noticed how dangerous it is when a river is diverted. How it begins to create a cause for disaster when it is left untouched for too long. What happens is these river beds grow trees, and they breed sediment and silt while slowly becoming much more narrow. When the storms come around, water will always find its natural course and pulse through these dry river beds like an explosion sending walls of landslides, rock, and debris down to the sea damaging roadways, homes

and coastal shorelines. I have seen water climb out of these sediment filled riverbeds and spread throughout the open land causing destruction and panic. The result at sea level is a mass amount of coral bleaching and a build up of silt in our wetlands. The wetlands are kidneys of our islands. When they are clogged up with mass amounts of silt, they forms unnatural little mounds that clog the islands natural course.

Where are the mitigation points in this EIS draft to safeguard our communities? Not to mention the millions of taxpaying dollars that are spent to our Police, Fire Departments and other departments like Electric, County Of Water, etc.... when these storm surges cause blackouts and sewage spills.

TRAIL MANAGEMENT

It was said in the draft that trails would not be managed for the safety of people.

Trails must be managed for the purpose of clearing our dry river beds to mitigate runoff. HRS 264 also states that all private roadways and historic trails must be protected on State Land. This means all trails must be managed. Cultural practices, and gathering rights must be respected and acknowledged. Mitigation purposes must be allowed for invasive species to managed for preservation and restoration of our watersheds. The EIS needs to show how the proposed water lease protects rights-of-way and access to other public lands. HRS 171-35 (Lease provisions) requires leases to protect rights of way and access to other public lands.

The EIS draft again fails to show proper management to laws set in place to protect our trails and roadways. We need precise documentation of our rights of ways.

CULTURAL SITES

This EIS draft has failed to comply with specific archeological components to truly identify cultural sites thru ground based techniques. It was stated in the EIS draft to SHPD as “involving no ground altering activities”. This is such a major denial and blatant disregard to historical preservation, and Kanaka identity. Many of these river systems are covered with terraces, ancient lo’i kalo patches and trails, along with heiau.

This EIS needs to meet the peoples concerns and should not be brushed off. The resurgence of Kanaka belief systems and practices are growing everyday, and they have a right to restore, return and revive their stories written in sand and stone.

IN CLOSING

I feel that this EIS Draft definitely does not put in to factor the seriousness of these concerns and really down plays the affects this will have to our communities, their cultural and religious rights, and our future generations opportunities to come as well.

THE PEOPLE HAVE SPOKEN, AND NOW IT IS DOCUMENTED THAT WE DO NOT CONSENT. THIS EIS DESERVES DILIGENCE AND TRUE STEWARDSHIP MANAGEMENT. IT IS NOT COMPLETE

From: cody nemet <kokoroots@gmail.com>
Sent: Thursday, November 7, 2019 1:05 AM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: EIS Draft(BLNR) Water Lease

To Mr. Earl Matsukawa,

THIS EIS IS NOT COMPLETE

Aloha nō, Please accept my comments and concerns regarding the EIS draft(Water Lease).

I am currently in land preservation, a kalo farmer, fisherman, gatherer and cultural practitioner. Wai affects every part of my daily life and I feel that every scope of management must be met in this EIS for the purposes of safeguarding life in the land and it's inhabitants. Although the EIS was very extensive, It is not complete and I am glad that our hui was able to work together in understanding it.

NOT ENOUGH INPUT FROM THOSE WHO UTILIZE STREAMS AND SPEAK FOR THOSE WITH NO VOICE.

There are major differences in productivity within the last few years. I have seen first hand how a once dry river bed, to a thriving stream can bring life and harmony to our watersheds, farmers, fishermen, and marine life. When HC&S released the water back to the 10 streams in East Maui a few years ago, a circle of life began to show itself. More water for a sustainable watershed, more for farmers, more water for 'Opae and 'O'opu to swim up river and down to the ocean, more fresh runoff to feed our reef systems which bring in Akule for our fishermen and more wai to feed our aquifers, and wetlands. The EIS draft has not brought up these important points.

SAFETY

Stream flow is important in the aspect of safety. I have noticed how dangerous it is when a river is diverted. How it begins to create a cause for disaster when it is left untouched for too long. What happens is these river beds grow trees, and they breed sediment and silt while slowly becoming much more narrow. When the storms come around, water will always find its natural course and pulse through these dry river beds like an explosion sending walls of landslides, rock, and debris down to the sea damaging roadways, homes

and coastal shorelines. I have seen water climb out of these sediment filled riverbeds and spread throughout the open land causing destruction and panic. The result at sea level is a mass amount of coral bleaching and a build up of silt in our wetlands. The wetlands are kidneys of our islands. When they are clogged up with mass amounts of silt, they forms unnatural little mounds that clog the islands natural course.

Where are the mitigation points in this EIS draft to safeguard our communities? Not to mention the millions of taxpaying dollars that are spent to our Police and Fire Departments and Electric company or County Of Water, when they have to spend time to fix blackouts and sewage spills?

TRAIL MANAGEMENT

It was said in the draft that trails would not be managed for the safety of people.

Trails must be managed for the purpose of clearing our dry river beds to mitigate runoff. HRS 264 also states that all private roadways and historic trails must be protected on State Land. This means all trails must be managed. Cultural practices, and gathering rights must be respected and acknowledged. Mitigation purposes must be allowed for invasive species to managed for preservation and restoration of our watersheds. The EIS needs to show how the proposed water lease protects rights-of-way and access to other public lands. HRS 171-35 (Lease provisions) requires leases to protect rights of way and access to other public lands.

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CULTURAL SITES

This EIS draft has failed to comply with specific archeological components to truly identify cultural sites thru ground based techniques. It was stated in the EIS draft to SHPD as “involving no ground altering activities”. This is such a major denial and blatant disregard to historical preservation, and Kanaka identity. Many of these river systems are covered with terraces, ancient lo’i kalo patches and trails, along with heiau.

This EIS needs to meet the peoples concerns and should not be brushed off. The resurgence of Kanaka belief systems and practices are growing everyday, and they have a right to restore, return and revive their stories written in sand and stone.

IN CLOSING

I feel that this EIS Draft definitely does not put in to factor the seriousness of these concerns and really down plays the affects this will have to our communities, their cultural and religious rights, and our future generations opportunities to come as well.

WE DO NOT CONSENT. THIS EIS DESERVES DILIGENCE AND TRUE STEWARDSHIP MANAGEMENT. IT IS NOT COMPLETE

Mahalo for your time, Cody Nemet Tuivaiti

From: cody nemet <kokoroots@gmail.com>
Sent: Thursday, November 7, 2019 12:34 AM
To: Public Comment
Subject: EIS draft(Water lease A&B)

To Mr. Earl Matsukawa,

THIS EIS IS NOT COMPLETE

Aloha nō, Please accept my comments and concerns regarding the EIS draft(Water Lease).

I am currently in land preservation, a kalo farmer, fisherman, gatherer and cultural practitioner. Wai affects every part of my daily life and I feel that every scope of management must be met for the purposes of safeguarding life in the land and it's inhabitants. Although the EIS was very extensive, I am glad that our hui was able to work together in understanding and reading through it.

NOT ENOUGH INPUT FROM THOSE WHO UTILIZE STREAMS AND SPEAK FOR THOSE WITH NO VOICE.

There are major differences in productivity within the last few years. I have seen first hand how a river can bring life and harmony to farmers, fishermen, and marine life. When HC&S released the water back to the 10 streams in East Maui a few years ago, a circle of life began to show itself. More water for farmers, more water for 'Opae and 'O'opu to swim up river and down to the ocean, more fresh runoff to feed our reef systems which bring in Akule for our fishermen and more wai to feed our aquifers, and wetlands.

SAFETY

Stream flow is important as well in the aspect of safety. I have noticed how dangerous it is when a river is diverted. How it begins to create a cause for disaster when it is left untouched for too long. What happens is these river beds grow trees, and builds sediment. When the storms come around, water will always find its natural course and pulse through these dry river beds sending walls of landslides, rock, and debris down to the sea damaging roadways, homes and coastal shorelines. The result at sea level is a mass amount of coral bleaching and a build up of silt in our wetlands. The wetlands are kidneys of our islands.

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CULTURAL SITES

This EIS draft has failed to comply with specific archeological components to truly identify cultural sites thru ground based techniques. It was stated in the EIS draft to SHPD as “involving no ground altering activities”. This is such a major denial and blatant disregard to Kanaka Maoli. Many of these river systems are covered with terraces, ancient lo’i kalo patches, and heiau. This EIS needs to meet the peoples concerns and should not be brushed off. The resurgence of Kanaka belief systems and practices are growing everyday, and they have a right to restore, return and revive their stories written in sand and stone.

I feel that this EIS Draft definitely does not put in to factor the seriousness of these concerns and really down plays the affects this will have to our communities, their cultural and religious rights, and the future generations opportunities to come as well.

WE DO NOT CONSENT. THIS EIS DESERVES DILIGENCE AND TRUE STEWARDSHIP MANAGEMENT. IT IS NOT COMPLETE

Mahalo for your time, Cody Nemet Tuivaiti



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CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Cody Nemet Tuivaiti
kokoroots@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Cody Nemet Tuivaiti:

Thank you for comments via three separate but nearly identical emails sent between 11:31 pm on November 6, 2019 and 1:05 am on November 7, 2019, regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

We note that your comments in each of your three emails are nearly verbatim and for all intents and purposes, are substantively the same in content. Your email of November 7, 2019 at 1:05 a.m. is comprehensive of the comments from your other two emails. Therefore, the following responses are provided to your comments from your November 7, 2019 email at 1:05 a.m. relating to the Draft EIS:

Comment 1: *THIS EIS IS NOT COMPLETE*

Aloha nō, Please accept my comments and concerns regarding the EIS draft (Water Lease).

Response 1: We acknowledge your comments but respectfully disagree with your comment that the EIS is not complete. The Draft EIS fully complied with all relevant requirements, including the content requirements set forth in HAR §11-200-16 and § 11-200-17, and the Draft EIS even includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement. The Draft EIS meets the necessary content requirements and for that reason we disagree with your comment that the Draft EIS is not complete. Please note that the Content Checklist has been updated as shown subsequently after the front cover based on updated discussions and additions added to the Final EIS.

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Comment 2: *I am currently in land preservation, a kalo farmer, fisherman, gatherer and cultural practitioner. Wai affects every part of my daily life and I feel that every scope of management must be met in this EIS for the purposes of safeguarding life in the land and it's inhabitants. Although the EIS was very extensive, It is not complete and I am glad that our hui was able to work together in understanding it.*

Response 2: We acknowledge and understand that you are currently in land preservation, a kalo farmer, fisherman, gatherer, and cultural practitioner, and that wai (water) affects your daily life.

Your comment about “every scope of management must be met in this EIS” is unclear. Nowhere is that mentioned in the content requirements for a Draft EIS as discussed in our response to your Comment #1, above. However, although not mentioned as a content requirement, several areas of management are discussed in the Draft EIS. Specifically, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under Hawai‘i Revised Statutes (HRS) § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the Board of Land and Natural Resources (BLNR) approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report prepared by the Department of Land and Natural Resources (DLNR) has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. Specifically, one of the content requirements calls for “adaptive management” which seeks (i) to establish measurable objectives, including performance metrics to measure and report the degree to which management actions have been successful in achieving goals and objectives; (ii) monitoring performance metrics to track success; and (iii) establishment of a systematic process to review results and employ adaptive management approaches to improve results where needed.

Moreover, as discussed in the Section 2.1.2 of the Final EIS and as shown on page 2-7, under the Proposed Action, with respect to the East Maui License Area, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System. Moreover, EMI has established a number of standard operating procedures to address the clean-up of trash and debris within the License Area. Besides

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recognizing unnecessary debris in the field during routine maintenance tasks, EMI has conducted specific identification and removal operations of debris that has been observed from previous field work. EMI also has in place a practice of removing any equipment and excess materials it brings into the License Area to perform work on the EMI Aqueduct System as soon as the job(s) is completed.

Note that Section 2.1.4 of the EIS discusses the Mahi Pono farm plan and how the estimated amount of diverted water is planned to be used, or managed, including for the acreages and types of various crops. Section 2.1.4 of the Final EIS has been revised to include additional information on Mahi Pono's farm plan as well as a description of current farming activity and water uses, as shown on pages 2-30 and 2-32.

Section 4.4 of the EIS discusses flora and fauna within the License Area and Central Maui, and recommends mitigation measures that are essentially management measures for EMI staff and Mahi Pono staff to protect native and special status species. These measures have been further updated based on comments received from the United States Fish and Wildlife Service (USFWS) to the Draft EIS as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131.

Comment 3: *NOT ENOUGH INPUT FROM THOSE WHO UTILIZE STREAMS AND SPEAK FOR THOSE WITH NO VOICE.*

Response 3: As discussed below, substantial effort was made to solicit broad public and governmental agency input to the EIS, including from those who utilize the streams.

Chapter 9 of the Draft EIS documents both the legally required and voluntary consultation efforts that were undertaken for the EIS. Initially, early consultation (aka pre-assessment consultation) was started in November 2016 with the mailing of letters to numerous parties seeking comments on the Proposed Action for EIS. Subsequently, the EIS Preparation Notice (EISPN) was prepared pursuant to HAR § 11-200-11.2(1) and published on February 8, 2017. Then, during the public comment period for the EISPN, Wilson Okamoto Corporation held two voluntary public EIS scoping meetings (one in Kahului on Feb. 22, 2017, and another at the Ha'ikū Park and Community Center in Pā'ia on Feb. 23, 2017). See Appendix K-1 and K-2 and L-1 and L-2 for transcripts of the scoping meetings, and Appendix J and M for early consultation letters, and letters commenting on the EISPN. Moreover, Appendix N of the Final EIS reproduces the comments and responses for the Draft EIS.

The Draft EIS was prepared after taking into consideration all of the information that was obtained through early consultation, comments received through the EISPN public comment

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process, and the two voluntary public scoping meetings. Following publication of the Draft EIS on September 23, 2019 and a 45-day public comment period, over 400 comments were received.

In addition to the required and voluntary consultation efforts undertaken for the EIS, the EIS includes studies that involved consultation efforts for research purposes, including the Social Impact Assessment (SIA) and the Cultural Impact Assessment (CIA). The SIA in Appendix G of the Draft EIS, obtained input from several community members, many of whom have direct and long-term experience with the streams in East Maui, and documents the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono which is summarized in Section 4.7.2 of the EIS. As discussed in Section 4 of Appendix G (Preliminary Community Issues), seven focus groups were convened in November 2018. Participants in these sessions included residents, farmers and ranchers, and people who are active in environment and sustainability efforts. These participants lived in Ke‘anae, Wailuānui, Huelo, Ha‘ikū, Kula, Makawao and Pukalani. Sixty-four people signed in at these focus groups, but the actual number of participants is higher because some individuals arrived after the session started and did not sign in. In addition, there were several follow-up interviews conducted in April 2019 to obtain feedback on the then-recent sale of A&B land holdings to Mahi Pono. The interviewees were diverse in interest and place of residence.

The CIA in Appendix F of the Draft EIS documents input from three interviewees, as well as numerous declarations made by various individuals during the Commission on Water Resource Management (CWRM) contested case proceedings. Cultural Surveys Hawai‘i (CSH), which prepared the CIA, had reached out to 136 parties in the preparation of the CIA prior to the publication of the Draft EIS, as documented in Section 4.6, but ultimately only three individuals agreed to be interviewed. CSH also reached out to members of the community who provided comments on the Draft EIS related to the CIA. CSH contacted 10 parties, including you, for additional consultation on the CIA. These consultation efforts are summarized in Section 4.6 of the Final EIS. Of those 10 parties contacted, only 4 responded. Although you had expressed concerns of a cultural nature, you did not respond to CSH's requests for an interview or more information. Please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See pages 4-239 to 4-252 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted.

Comment 4: *There are major differences in productivity within the last few years. I have seen first hand how a once dry river bed, to a thriving stream can bring life and harmony to our watersheds, farmers, fishermen, and marine life. When HC&S released the water back to the 10 streams in East Maui a few years ago, a circle of life began to show itself.*

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Response 4: We acknowledge your comments. Notably, several commenters on the Draft EIS offered characterizations similar to yours of stream recovery following restoration of flows. As noted in Response #3 above, the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See pages 4-239 to 4-252 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. As discussed in Section 4.2.1 of the Draft EIS, the proposed Water Lease is projected to increase the number of HU as compared to sugarcane operations. The initial conclusion, as presented in Section 4.2.1 of the Draft EIS, was that "under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition." However, please note that Section 4.2.1 of the EIS has been revised, and the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model provided as Appendix A has been clarified. Under the Proposed Action, the number of habitat units (HU) within the entire License Area is decreased by an estimated 36.1% from a theoretical Natural Condition (i.e. a condition where no streams are diverted). This is considered theoretical because even under the No Water Lease scenario, the EMI Aqueduct System would continue to divert 30% of the water available at the Honopou Stream boundary after compliance with Interim Instream Flow Standards (IIFS) established under the CWRM Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O). However, under the Proposed Action, the number of HU is increased by approximately 27.4% in comparison to the Full Diversion condition that existed when the diverted water was used for sugar cultivation.

Please note that as of October 2020, an average of 23.3 million gallons a day (mgd) was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted from the License Area under the No Action alternative, which is estimated to be approximately 26.39 mgd.

Regarding the 10 streams you mention, we interpret that to mean those ordered for full flow restoration under the CWRM D&O, including: Honopou (Puniawa Tributary), Huelo (Puolua), Hanehoi, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), Waiokamilo, Wailuānui (Waikani Waterfall), Waiohue, West Wailuāiki, and Makapīpī. The CWRM D&O explains that these streams were suitable for full flow restoration because they were identified as supplying active taro farming areas.

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The Proposed Action described in Section 2.1 of the Draft EIS states that its premise is compliance with the CWRM D&O, meaning there will be no diversions from these 10 streams. As discussed in Response #5 below, the Draft EIS included analyses of instream habitat impacts resulting from diversions using the HSHEP model by Trutta Environmental Solutions. Trutta's report in Appendix A of the EIS addresses the impacts of streamflow diversion on the native amphidromous stream species. It ultimately concluded based on a combination of field surveys and habitat modeling, that streamflow restoration under the CWRM D&O would improve instream habitat conditions for native amphidromous stream animals and would improve habitat over a wide range of streams from a regional perspective when compared to stream diversions during sugarcane operations.

Comment 5: *More water for a sustainable watershed, more for farmers, more water for 'Opae and 'O'opu to swim up river and down to the ocean, more fresh runoff to feed our reef systems which bring in Akule for our fishermen and more wai to feed our aquifers, and wetlands. The EIS draft has not brought up these important points.*

Response 5: While we generally concur with your comment on the benefits of water as streamflow, we offer our responses below in the context of the Draft EIS for the streams in East Maui.

Regarding your comment about a sustainable watershed, please refer to our Response #2 above, explaining that a watershed management plan will be developed prior to the issuance of the Water Lease.

Regarding your comment about more for farmers, as mentioned in our preceding Response #4, note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming from streams within the License Area, as discussed in Section 1.3.4 of the Draft EIS. It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), provided as Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for taro were identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihaele, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by

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blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown in pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration status); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis included in Appendix I of the EIS (East Maui Water Lease: Agricultural and Related Economic Impacts report), and summarized in Section 4.7.4, taro farms in East Maui (from Honopou to Nāhiku), including use of water from streams not subject to the CWRM D&O, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). This estimate is update from the Draft EIS, where the analysis was based upon known landowners who have about 45 acres in East Maui that are suitable for growing taro. Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. This acreage is assumed for the Proposed Action and all associated alternatives since nearly all potential new taro cultivation is assumed to draw water from fully restored taro streams which will have the same flows under all alternatives. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O "*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*" (CWRM D&O at iv).

Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to

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cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops.

The above discussion has been added to Section 4.7.4 of the Final EIS as shown in pages 4-288 to 4-293.

Regarding your comment about more water for ‘opae and ‘o‘opu, please note that the HSHEP model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts, including habitat for those species. Specifically, ‘O‘opu nākea (*Awaous stamenius*); ‘O‘opu alamo’o (*Lentipes concolor*); ‘O‘opu naniha (*Stenogobius hawaiiensis*); ‘O‘opu nōpili (*Sicyopterus stimpsoni*); ‘O‘opu akupa (*Eliotris sandwicensis*); ‘Ōpae kala‘ole (*Atyoida bisulcata*); ‘Ōpae ‘oeha‘a (*Macrobrachium grandimanus*);. However, it is important to recognize that the accumulation of HU for amphidromous species is additive, meaning that a single unit of stream may have a total HU in excess of the stream area quantified. In other words, if HU for multiple non-competitive species in a given area are added together, the combined HU could be greater than the area. This is important when considering the total HU for all of the amphidromous species in a stream as the total HU for all of the measured species may be greater than the total stream area. Please note that Section 4.2.1 of the Final EIS has been revised as shown in pages 4-61 to 4-67 to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals’ habitats. In summary, due to an increase in streamflow under the Proposed Action when compared to historical diversion rates during sugarcane operations, ‘opae and ‘o‘opu are anticipated to have an increase in stream HU. However, these HU will likely decrease from current conditions as more water is gradually diverted as the Mahi Pono farm plan develops to full build-out as outlined in Section 4.2.1 of the EIS.

Your comment about “*more fresh runoff to feed our reef systems which bring in Akule for our fishermen*” may be acceptable as a broad generalization, but the scale of impact that streamflow restoration in East Maui will have on reefs and marine life is negligible. A stream and ocean water chemistry assessment (titled East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry) was conducted by Sea Engineering, Inc. (SE) and Marine Research Consultants, Inc. (MRC) in 2018, which was summarized in Section 4.2.3 and included in the Draft EIS as Appendix B. The collected data presented in Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, because the nutrient concentrations in the ocean do not change substantially due to stream diversions as

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proposed under the Water Lease, there is no pathway for fishing to be negatively impacted. This analysis means that impacts to ocean fish from the Proposed Action are negligible.

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat

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flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawā and Paʻakea) have connectivity flow restoration ordered. Paʻakea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83.

Regarding your comment about aquifers, Section 4.2.2 of the Draft EIS discusses groundwater and impacts associated with the Proposed Action in East Maui, Upcountry Maui, and Central Maui. However, we assume that in your comment that you are referring to the aquifers in East Maui. As it relates to East Maui, Section 4.2.2 of the Draft EIS states:

The Proposed Action is limited to the issuance of the Water Lease for the subject License Area, which would enable the lessee to continue operation of the EMI Aqueduct System that has been in operation for over a century. The Proposed Action continues the use of the system for the transport of surface water, and allows the lessee or its permittees, to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System. In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of the DHHL. No significant impacts on groundwater in the region are anticipated. Groundwater levels are expected to be greater than historic levels due to increased recharge from stream restoration actions under the CWRM D&O.

However, please note that Section 4.2.2 has been revised to take into account the updated sustainable yield numbers and a USGS 2019 climate change study as shown in page 4-71 for East Maui and page 4-76 for Central Maui.

Moreover, it is recognized that Hawaiʻi's fresh water originates from the forest, which capture and absorb hundreds of inches of rain each year, allowing for slow infiltration and replenishment of our aquifers and streams. Based upon this understanding, as discussed in the DLNR report provided as Appendix O-1 of the EIS, the legislature added sub-section (e) to HRS § 171-58, requiring the incorporation of a watershed management plan into all water lease agreements to help protect freshwater resources (surface and groundwater). In addition to sustaining ground and surface water supplies, healthy forests reduce erosion by holding soil in place, improve water quality, and provide habitat for unique and endangered plants and animals. Focusing on watershed management plans that target mauka protection actions (fencing, removal of hooved

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animals from important watershed forests, invasive weed control, etc.) that benefit native forests is essential if water lessees are going to have a reliable long-term supply of fresh water.

Regarding your comment about wetlands, please note that there are not any wetland environments within the License Area. This was established by CWRM during its IIFS deliberations which took into account wetland environments to maintain and restore along those streams that contained wetlands at the headwaters of specific streams. Conclusion of Law (COL) 35 of the CWRM D&O notes that "[a]ll streams except for Waiaaka and Ohia Streams have palustrial wetlands in the upper watershed of the hydrological unit and have not been affected by diversions." Hence it is anticipated that under the Proposed Action that these identified wetlands would continue to be unaffected.

Comment 6: *SAFETY. Stream flow is important as well in the aspect of safety. I have noticed how dangerous it is when a river is diverted. How it begins to create a cause for disaster when it is left untouched for too long. What happens is these river beds grow trees, and they build sediment and silt while slowly becoming much more narrow. When the storms come around, water will always find its natural course and pulse through these dry river beds like an explosion sending walls of landslides, rock, and debris down to the sea damaging roadways, homes and coastal shorelines. I have seen water climb out of these sediment filled riverbeds and spread throughout the open land causing destruction and panic. The result at sea level is a mass amount of coral bleaching and a build up of silt in our wetlands. The wetlands are kidneys of our islands. When they are clogged up with mass amounts of silt, they form unnatural little mounds that clog the islands natural course.*

Response 6: We are unable to determine from your description what stream channels you are referring to and where along the course of those stream channels the impacts you discussed have supposedly occurred and when. While there is some foundation for relating siltation to upstream flooding and the sudden release of stream obstructions, without specific information that can tie those events to a stream diversion, your assertions are speculative as opposed to establishing causality. Adverse impacts due to the conveyance of diverted water from a stream channel associated with failure of the streambanks or stream channel could be mitigated by standard streambank restoration practices. However, the kinds of flows that you seem to be referring to tend to be associated with 10-, 50- & 100-year storm events. Hence, during these high flow events it is common for sediment transport to occur. Sediment transport in streams is a function of stream power (i.e., the ability of the streamflow to pick up and move instream sediment). The torrential flows in East Maui streams have sufficient stream power to move large boulders and everything smaller. Stream diversions do decrease stream power by removing water from the stream, but this is primarily at low flows. The diversions are quickly overtopped during high flow events and thus sufficient flushing flows have always occurred in East Maui streams.

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As noted in Response #5 above, there are no wetland environments in the License Area. As for coral bleaching, Section 4.3.1 of the EIS acknowledges that sediment flows into the ocean may be stressful for marine life and coral reefs. "However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species." See also Response #5, explaining that due to the continuous wave energy in the near shore areas of East Maui, studies for the EIS concluded that the nearshore areas below the License Area in East Maui do not constitute important habitats for coral reef communities and marine species.

Comment 7: *Where are the mitigation points in this EIS draft to safeguard our communities? Not to mention the millions of taxpaying dollars that are spent to our Police, Fire Departments and other departments like Electric, County Of Water, etc.... when these storm surges cause blackouts and sewage spills.*

Response 7: Your comment assumes a causal relationship between stream diversion and flooding events, which is not established. As discussed in Response #6 above, please note that floods are caused by heavy rainfall associated with tropical rainstorms. In Hawai'i, streams originate in steep mountains and flow relatively quickly to the ocean, often triggering flash floods in coastal areas. Coastal plains and stream flood plains in the vicinity of the License Area are susceptible to flooding, which can be exacerbated where development impedes or prevents infiltration of the water into the ground. As discussed in Section 2.1 of the EIS, the Proposed Action involves the issuance of a 30-year Water Lease, which would grant the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water for uses described in the EIS. No development is planned in the License Area as part of the Proposed Action.

With regard to your comment "*where are the mitigation points in the EIS... to safeguard the communities*" please refer to Section 4.3.3 of the Draft EIS which discussed flood and tsunami hazards:

According to the FEMA Flood Insurance Rate Maps (FIRM), the License Area is predominantly designated as Zone "X", "Areas determined to be outside the 0.2% annual chance floodplain." (See Figure 4-28) A number of adjacent parcels along the makai edge of the License Area lie in areas designated as Zone "A", "Areas subject to inundation by the 1-percent-annual-chance flood event generally determined using approximate methodologies." However, flooding in East Maui generally caused by freshets.

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With regard to maintenance of the streams within the License Area, the streams are on State land which falls under the purview of the DLNR.

Regarding your comment about tax dollars going to various agencies to respond to blackouts and sewage spills, this is outside the scope of the EIS because the Proposed Action, the issuance of the Water Lease, is not expected to cause any blackouts or sewage spills. There are no public power generating facilities nor sewage treatment plants within the License Area. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water for uses described in the EIS. The environmental impacts of the potential Water Lease, and where appropriate proposed mitigation measures, are included through Chapter 4 of the EIS.

Specifically, the EIS discusses the Proposed Action's impacts on public services and facilities in Section 4.14.1 of the EIS:

The Proposed Action is limited to the issuance of the Water Lease for the subject License Area, which would enable the lessee to continue operation of the EMI Aqueduct System that has been in operation for over a century. The Proposed Action continues the use of the system for the transport of surface water, and allows the lessee or its permittees, to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System. In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of DHHL. No significant impacts on public services in the region are anticipated as the Proposed Action will not generate the need for additional services.

Comment 8: TRAIL MANAGEMENT. *It was said in the draft that trails would not be managed for the safety of people. Trails must be managed for the purpose of clearing our dry river beds to mitigate runoff. HRS 264 also states that all private roadways and historic trails must be protected on State Land. This means all trails must be managed.*

Response 8: We respectfully disagree with your comment that the Draft EIS states that the trails would not be managed for the safety of people. Nowhere in the EIS is this stated. To the contrary, Section 2.1 of the Draft EIS provides that the Proposed Action involves the issuance of a 30-year Water Lease that would grant the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water for uses described in the EIS. Under the Water Lease, the lessee would also have the right to enter

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upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System.

Hence, the Proposed Action would maintain roads and trails associated with the EMI Aqueduct System, many of which are used by the public. The reference to roads is assumed to mean unpaved roads within the License Area used to maintain the EMI Aqueduct System, as opposed to any roads under HRS Chapter 264 (Highways) which would be outside of the scope of this EIS.

With regard to the historic trails and roads that are within the License Area, Section 4.5 of the Final EIS as well as Appendix E (Archaeological Literature Review and Field Inspection) have been revised to include the current inventory of roads and trails in the License Area as shown in pages 4-147 to 4-149. CSH completed a geographic analysis of trails and roads that appear within the License Area as depicted on maps between 1869 and 1992 and available to the public domain. The majority of roads and trails within the License Area are associated with access to the EMI Aqueduct System and these road and “ditch trails” are likely contemporary with the construction of the EMI Aqueduct System.

Figure 4-39 has been added to the Final EIS to correspond with the above text (Figure 48 in Appendix E).

Furthermore, the various public recreational facilities, hiking trails, and hunting areas in the License Area, including access points, are identified in Section 4.8 of the EIS and Figures 4-37 and 4-38 of the Draft EIS (Figure 4-40 and 4-41 in the Final EIS). However, please note that Section 4.8 of the Final EIS has been updated to include more recreational facilities and an accurate discussion regarding access into the License Area as it relates to recreational activities as shown in pages 4-305 to 4-309.

Comment 9: *Cultural practices, and gathering rights must be respected and acknowledged. Mitigation purposes must be allowed for invasive species to managed for preservation and restoration of our watersheds.*

Response 9: With regard to cultural practices and gathering rights, the CIA prepared by CSH was included as Appendix F to the EIS, and it identified several native Hawaiian traditional and customary practices related to the License Area. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS presents the following with respect to possible impacts:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These

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species include but are not limited to 'ōpae, 'o'opu, pūpūlo 'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as 'o'opu) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision. . . .

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS, and it was acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the

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streams in the historic taro-growing areas in East Maui. Moreover, based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

Regarding your comment about mitigation measures for invasive species, please note that Sections 4.4.1 and 4.4.2 of the EIS discuss mitigation measures addressing impacts from invasive species. Specifically, as it relates to invasive species, it is noted in the Terrestrial Flora and Fauna Technical Report for the Proposed East Maui Water Lease report (EIS Appendix C) that that low-elevation portions of the License Area are already highly impacted by invasive plants. However, it is noted in Appendix C that high-elevation portions of the License Area are predominately dominated by native species and is very likely to contain habitat for several endangered or threatened species. Impacts related to flora and fauna as a result of the Proposed Action are discussed in Section 4.4.1 and Section 4.4.2 of the EIS, which have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based

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on feedback provided by the DLNR and USFWS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS

Moreover, to date, EMI has worked closely with the Maui Invasive Species Committee (MISC) to assist in mitigating non-native weeds along with the EMI Aqueduct System and access roads. Typical procedures involve EMI staff notifying MISC of sightings and locations of non-native weeds, and then facilitating access by MISC to these identified areas to conduct appropriate treatment methods. EMI has committed to continuing to work with MISC in order to institute more stringent protocols for equipment sanitization and protection of the License Area.

Also note that, as discussed in Response #2 above, a watershed management plan will also be required in connection with the proposed Water Lease, as required by statute. Note that the minimum content requirements for watershed management plans under the category of "Goals" specifically address invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. Section 2.1 of the EIS has been revised as shown on pages 2-2 to 2-4 to provide this updated information regarding the content requirements for a watershed management plan.

Comment 10: *The EIS needs to show how the proposed water lease protects rights-of-way and access to other public lands. HRS 171-35 (Lease provisions) requires leases to protect rights of way and access to other public lands. The EIS draft again fails to show proper management to laws set in place to protect our trails and roadways. We need precise documentation of our rights of ways.*

Response 10: HRS § 171-35 does not require a lessee to protect rights of way and access to other public lands. To the extent that HRS § 171-35 (Lease provisions; generally) applies to a water lease, it gives the BLNR discretion on whether and how to address reservations of rights of way and access to other public lands. The section of the law you cited provides as follows:

Every lease issued by the board of land and natural resources shall contain:

- 1. The specific use or uses to which the land is to be employed;*
- 2. The improvements required; provided that a minimum reasonable time be allowed for the completion of the improvements;*
- 3. Restrictions against alienation as set forth in § 171-36;*
- 4. The rent, as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;*

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5. *Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and*
6. *Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the state constitution and of this chapter.*

Your comment about precise documentation of right of ways is unclear. With regard to trails in the License Area, however, as discussed in Response #8 above, Section 4.5 of the Final EIS as well as Appendix E (Archaeological Literature Review and Field Inspection) have been revised to include the current inventory of roads and trails in the License Area as shown in pages 4-147 to 4-149. CSH completed a geographic analysis of trails and roads that appear within the License Area as depicted on maps between 1869 and 1992 and available to the public domain. The majority of roads and trails within the License Area are associated with access to the EMI Aqueduct System and these road and “ditch trails” are likely contemporary with the construction of the EMI Aqueduct System.

Figure 4-39 has been added to the Final EIS to correspond with the above text (Figure 48 in Appendix E).

Comment 11: *CULTURAL SITES. This EIS draft has failed to comply with specific archeological components to truly identify cultural sites thru ground based techniques. It was stated in the EIS draft to SHPD as “involving no ground altering activities”. This is such a major denial and blatant disregard to historical preservation, and Kanaka [Maoli] identity. Many of these river systems are covered with terraces, ancient lo’i kalo patches and trails, along with heiau.*

Response 11: We respectfully disagree with your comment. Correspondence from the DLNR State Historic Preservation Division (SHPD) dated January 27, 2017 and October 6, 2017 are appended to the Draft EIS Appendix E (Archaeological Literature Review and Field Inspection report) (LRFI report), confirming SHPD's position on this issue. Issuance of the Water Lease is not anticipated to affect any historic property, aviation artifacts, or burial site. As discussed in Draft EIS Section 4.5 (Historic and Archaeological Resources) the Proposed Action does not involve any new construction or significant ground disturbance within undisturbed areas within the License Area. The Proposed Action continues the use of the EMI Aqueduct System for the transport of surface water, and allows the lessee or its permittees, to maintain and repair existing access roads and trails long-used as part of the EMI Aqueduct System.

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The archaeological LRFI report prepared by CSH included an analysis of the natural and built environment of the License Area, a comprehensive review of traditional and historic background information of the region, a review of previous archaeological studies and findings in the region, and a field inspection of the License Area focused on inspecting the areas nearest to the EMI Aqueduct System infrastructure and access roads. Based on the research and analysis conducted for the LRFI, neither the Water Lease, nor the alternatives, is expected to have impacts archaeological historic properties within the License Area because none of these actions include significant related ground disturbance, or any significant ground disturbance within undisturbed areas.

If, through future implementation of the Proposed Action or the alternatives, ground disturbance subject to County, State, and/or Federal permits is required, then CSH recommends consultation with the SHPD to determine historic preservation requirements. The LRFI also provides cultural resource management recommendations based on the extensive research and analysis conducted during the study. For example, CSH recommends that any persons who are required to enter the License Area as part of the Proposed Action or alternatives be made aware of the potential for discovery of undocumented surface historic properties such as walls, trails, terraces, mounds, and/or caves. These structures should be avoided, protected, and reported to the SHPD. The SHPD will determine if additional mitigation is required. This recommendation is in line with recommendations that were made for the Waikamoi Preserve during a cultural-historical study of East Maui (Maly and Maly 2006).

Regarding your comment that many of the river systems are covered with terraces, ancient lo'i kalo patches and trails, along with heiau, please note that you did not list any specific river systems or locations in your comment and we are unable to confirm if there are such features along any specific river system. Moreover, the EIS and the Appendix E of the EIS does not deny that there are historic properties within the License Area.

Comment 12: *This EIS needs to meet the peoples concerns and should not be brushed off. The resurgence of Kanaka belief systems and practices are growing everyday, and they have a right to restore, return and revive their stories written in sand and stone.*

Response 12: The EIS is being prepared to meet and even voluntarily exceeds the process and content requirements established by HRS Chapter 343 and HAR Title 11 Chapter 200 for the stated Proposed Action. As discussed in Response #3 above, extensive consultation was done for this EIS. The EIS documents and addresses many concerns brought up during community outreach and public review periods. Please note that, as discussed in Response #3 above, in addition to the required and voluntary procedural consultation efforts for the EIS, the EIS includes studies that involved consultation efforts for research purposes, including the Social

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Impact Assessment (SIA) and the Cultural Impact Assessment (CIA). The SIA in Appendix G of the Draft EIS, obtained input from several community members, many of whom have direct and long-term experience with the streams in East Maui, and documents the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono which is summarized in Section 4.7.2 of the EIS. As discussed in Section 4 of Appendix G (Preliminary Community Issues), seven focus groups were convened in November 2018. Participants in these sessions included residents, farmers and ranchers, and people who are active in environment and sustainability efforts. These participants lived in Ke‘anae, Wailuānui, Huelo, Ha‘ikū, Kula, Makawao and Pukalani. Sixty-four people signed in at these focus groups, but the actual number of participants is higher because some individuals arrived after the session started and did not sign in.

In addition, there were several follow-up interviews conducted in April 2019 to obtain feedback on the then-recent sale of A&B land holdings to Mahi Pono. The interviewees were diverse in interest and place of residence.

The CIA in Appendix F of the Draft EIS documents input from three interviewees, as well as numerous declarations made during the Commission on Water Resource Management (CWRM) contested case proceedings. Cultural Surveys Hawai‘i (CSH), which prepared the CIA, also has reached out to members of the community who provided comments on the Draft EIS related to the CIA. CSH contacted 10 parties, including yourself, for additional consultation on the CIA, the efforts of which are summarized in Section 4.6 of the Final EIS. Of those 10 parties contacted, only 4 responded, and you were excluded as you chose not to respond. Please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See pages 4-239 to 4-252 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted.

Moreover, Chapter 9 of the EIS includes a list of all those governmental agencies (state, federal and county), organizations and individuals that have either participated in the EIS process and or received notifications regarding the EIS process. Concerns expressed by the public have not been brushed off. Appendices M and N reproduce comments and responses for all those that participated in the EIS process.

Comment 13: *IN CLOSING. I feel that this EIS Draft definitely does not put in to factor the seriousness of these concerns and really down plays the affects this will have to our communities, their cultural and religious rights, and our [the] future generations opportunities to come as well.*

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Response 13: We respectfully disagree with your comment that the EIS does not factor in the seriousness of concerns of the nature raised in your comment letter, and we disagree that the EIS downplays the effects the Proposed Action will have on East Maui communities. Please note as discussed in Response #12 above that community concerns were well documented and addressed. Moreover, following receipt of your Draft EIS comments, you were invited to participate in an additional CIA interview to be conducted by CSH, which is summarized in Section 4.6 and Appendix F of the Final EIS. You were invited to participate so that you could elaborate more on your concerns. However, you did not respond or choose to participate. Anticipated impacts from the proposed Water Lease are documented in the nine technical studies that were prepared in conjunction with the EIS (see EIS Appendix A - I), and are discussed throughout Chapter 4 of the EIS.

Comment 14: *WE DO NOT CONSENT. THIS EIS DESERVES DILIGENCE AND TRUE STEWARDSHIP MANAGEMENT. IT IS NOT COMPLETE.*

Response 14: We respectfully disagree with your comment that the EIS is not complete or diligently prepared. This EIS process started in 2016 and has been conducted with diligence. As discussed in Response #1 above, in terms of specific contents, the Draft EIS fully complies with the content requirements set forth in HAR § 11-200-16 and §11-200-17, and includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement. Similarly, the Final EIS has been prepared in compliance with all appropriate laws and regulations.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Keola Cheng

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: [Daniel K](#)
To: [Public Comment](#)
Cc: ian.c.hirokawa@hawaii.gov
Subject: Comments on the September 23, 2019 Huelo, Honomanu, Ke'anae and Nahiku Water Leases Draft EIS
Date: Thursday, November 7, 2019 10:43:05 PM

To: Alexander & Baldwin November 7, 2019
Consultant: Wilson Okamoto Corporation

Attention: Mr. Earl Matsukawa
Re: Comments on the September 23, 2019 Huelo, Honomanu, Ke'anae and Nahiku Water Leases Draft EIS

Aloha e Mr. Matsukawa,

My name is Daniel Kanahale. I am a historic researcher and a Kanaka Maoli who is familiar with the Hawaii Historic Review process. I am also active in the Aha Moku o Maui.

I am very disappointed that the Draft EIS for the East Maui Water Lease Areas did not conduct any Archaeological Inventory work on these historically rich public lands.

The archaeological review apparently was the result of only 3 days of fieldwork by 5 people conducted under HAR 13-13-282. It was described as an inspection of the License area's access road network and an inspection on foot of 21 intake areas.

From the map, fig 47, provided in Appendix E Historical Review, it looks like 8 of these intake points are on EMI land and not technically in the "License Area." This illustrates to me why the EIS needs to have an actual AIS with field work of the entire area where the EMI ditch system operates, whether it is on state land or EMI land, as well as identify sites on private lands that may be at risk of being impacted by high water levels.

While SHPD initially required there be Archaeological Review through preparation of an AIS, the EIS consultants informed SHPD that the proposed lease would not involve any ground altering work, and that the potential of abandoning diversions on five streams would not result in any flooding greater than periodic naturally occurring events. Based upon that information, SHPD withdrew the request for an AIS. It seems clear that if a lease is granted, there will be ground disturbing work that goes along with the operation of the ditch system. Under the state EIS rules this would be seen as a "secondary impact of the action." In other words, if the primary Action occurs, other activities are very likely to take place. In this case, those activities will involve clearing of roads and trails; modifications of some of the intakes on state lands and EMI lands, installation of gauges and other possible activities. The brief 3 day field inspection of 21 intakes and nearby trails cannot be said to be representative of the presence or absence of historic properties surrounding the hundreds of intakes and 62 miles of trails found in the EMI system.

I have friends active in the the Hamakualoa and Ko'olau Aha Moku o Maui where the License area is located. These folks are aware of numerous pre-contact historic sites along many of the steams that are diverted by EMI. Some are on State land. Some are on EMI land. EMI acquired many Land Commission Award parcels to benefit from the LCA kuleana water rights. Have you reached out to Aha Moku Councils members who have generational knowledge of these areas? This needs to done bcause there are historic sites that have not been documented.

The EIS needs to include a discussion of secondary and cumulative impacts of the proposed lease action on historic sites, including historic trails that may be found on State or EMI land. What happens on State land can also affect historic properties, such as lo'i kalo on EMI lands and kuleana holdings that lie in the areas between the various levels of the ditch system.

Appendix E refers to impacts that could be caused to lands upcountry if the Leases were not granted and new wells

needed to be drilled in the Upcountry area. It should also acknowledge that if the leases ARE granted, ground altering activities will be conducted in the License area AND on EMI lands and these carry the risk of impacts to historic sites if no survey has been done to identify these sites and mitigate impacts.

EIS cannot properly evaluate the secondary and cumulative impacts on historic sites without including an AIS that is reviewed and accepted by SHPD.

The EIS also needs to provide an inventory of historic roads and trails that exist on the State License area and on EMI lands. Such trails are historic properties protected under our state laws and also in our Community plans. We know that the lands of the License area are now and were in the past a resource for the Hawaiian communities who lived along these streams. This means that there were trails and roads used to access the upper areas of the streams.

EIS content requirements require that the EIS consider not just the proposed action, but also secondary and cumulative impacts that could result from the proposed action. The DEIS may discuss a lease, but the granting of that lease will result in many other activities that have the potential to impact historic sites that have not been documented.

Thank you for the opportunity to offer comments on the DEIS.

Me ka ha'aha'a,

Daniel Kanahale
1100 Kupulau Dr. Kihei 96753
808-879-2239



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Mr. Daniel Kanahahele
1100 Kupulau Drive
Kihei, HI 96753
Tookie49_2004@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Kanahahele:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *My name is Daniel Kanahahele. I am a historic researcher and a Kanaka Maoli who is familiar with the Hawaii Historic Review process. I am also active in the Aha Moku o Maui.*

Response 1: We acknowledge your comments and understand that you are a historic researcher that is familiar with the Hawai‘i Historic Review process.

Comment 2: *I am very disappointed that the Draft EIS for the East Maui Water Lease Areas did not conduct any Archaeological Inventory work on these historically rich public lands.*

The archaeological review apparently was the result of only 3 days of fieldwork by 5 people conducted under HAR 13-13-282. It was described as an inspection of the License area’s access road network and an inspection on foot of 21 intake areas.

From the map, fig 47, provided in Appendix E Historical Review, it looks like 8 of these intake points are on EMI land and not technically in the “License Area.” This illustrates to me why the

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EIS needs to have an actual AIS with field work of the entire area where the EMI ditch system operates, whether it is on state land or EMI land, as well as identify sites on private lands that may be at risk of being impacted by high water levels.

Response 2: Please note that there is no requirement under HRS Chapter 343 that an EIS include an archaeological inventory survey. Kaleikini v. Yoshioka, 128 Hawai‘i 53, 283 P.3d 60 (2012) (holding that, with respect to the EIS done for the Honolulu rail project, "although the final EIS did not include an AIS, it was nonetheless sufficient to enable the decision-maker to consider fully the environmental factors involved" and upholding the acceptance of the EIS.). The DEIS, as required under HRS Chapter 343, includes extensive information about archaeological, historic, and cultural resources, including the following three technical studies: Historical Structure Assessment, Archaeological Literature Review and Field Inspection, and Cultural Impact Assessment. A Chapter 6E-7 and 6E-42 historic preservation review letter dated 25 January 2017 (Log No. 2017.00026; Doc. No. 1701GC08) sent from the SHPD to the DLNR Land Division requested that, pursuant to HAR §13-284-5(b)(5)(A and C), an archaeological inventory survey (AIS) and architectural inventory survey would be required prior to issuance of the lease and that these surveys also be preceded by inventory plans.

Additional information regarding the Proposed Action was provided to the SHPD including the understanding that the proposed Water Lease will not involve any ground disturbance and that the potential impact of flooding from abandoning the diversion on five streams will not be greater than periodic naturally occurring events. A subsequent Chapter 6E-8 historic preservation review letter (Log No. 2017.00026; Doc. No. 1706MBF11) sent from the SHPD to the DLNR Land Division updated the previous correspondence to no longer request or require an AIS plan or AIS for the Lease Area in conjunction with the Proposed Action.

An archaeological literature review and field inspection (LRFI) was prepared to determine the likelihood that historic properties (any building, structure, object, district, area, or site over 50 years old) may be affected by the project and, based on findings, consider cultural resource management recommendations. The LRFI is intended to facilitate the project's planning and support the project's environmental review compliance.

The archaeological literature review and field inspection report included an analysis of the natural and built environment of the License Area, a comprehensive review of traditional and historic background information of the region, a review of previous archaeological studies and findings in the region, and a field inspection of the License Area focused on inspecting the areas nearest to the EMI Aqueduct System infrastructure and access roads. The investigation did not include an inventory of all historic properties that may be present within the License Area, but

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has provided cultural resource management recommendations based on the extensive research and analysis conducted during the study.

Furthermore, in response to comments received on the Draft EIS, discussions regarding the legendary Pōhaku of Wahinepe'e has been added to Appendix E of the EIS, and summarized in Section 4.5 of the Final EIS as shown on page 4-138.

Comment 3: *While SHPD initially required there be Archaeological Review through preparation of an AIS, the EIS consultants informed SHPD that the proposed lease would not involve any ground altering work, and that the potential of abandoning diversions on five streams would not result in any flooding greater than periodic naturally occurring events. Based upon that information, SHPD withdrew the request for an AIS. It seems clear that if a lease is granted, there will be ground disturbing work that goes along with the operation of the ditch system. Under the state EIS rules this would be seen as a "secondary impact of the action." In other words, if the primary Action occurs, other activities are very likely to take place. In this case, those activities will involve clearing of roads and trails; modifications of some of the intakes on state lands and EMI lands, installation of gauges and other possible activities. The brief 3 day field inspection of 21 intakes and nearby trails cannot be said to be representative of the presence or absence of historic properties surrounding the hundreds of intakes and 62 miles of trails found in the EMI system.*

Response 3: The Proposed Action constitutes the issuance of one long term (30 years) Water Lease from the BLNR for the continued "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease will enable the lessee to continue to go on lands owned by the State in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow continued operation of the EMI Aqueduct System to deliver water to the County of Maui DWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users as the Kula Agricultural Park (KAP), as well as for the Nāhiku community. It will also allow the continued provision of water to approximately 30,000 acres of agricultural lands in Central Maui.

For the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the continued operation and maintenance of the EMI

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Aqueduct System. Hence, the Proposed Action will not require any significant ground disturbance and the potential impact of flooding from abandoning the diversions will not be greater than periodic naturally occurring events. Moreover, the Proposed Action will not include partial or total destruction or alteration of any known historic properties, detrimental alteration of the surrounding environment, detrimental visual, spatial, noise or atmospheric impingement, increasing access with chance of resulting damage, nor neglect resulting in deterioration or destruction. As such, the Proposed Action will have no impact to archaeological historic properties.

Comment 4: *I have friends active in the the Hamakualoa and Ko'olau Aha Moku o Maui where the License area is located. These folks are aware of numerous pre-contact historic sites along many of the steams that are diverted by EMI. Some are on State land. Some are on EMI land. EMI acquired many Land Commission Award parcels to benefit from the LCA kuleana water rights. Have you reached out to Aha Moku Councils members who have generational knowledge of these areas? This needs to done bcause there are historic sites that have not been documented.*

Response 4: Chapter 9 of the EIS contains all consultation efforts during this EIS process. Particularly, two aha moku members, one each from the Aha Moku o Hamakua Loa/Hamakua Poko and Aha Moku o Kaupo, participated during the EISPN process and commented on the EISPN and were encouraged to continue to participate throughout the entire EIS process. Additionally, the Aha Moku o Maui, Inc. was contacted and one member provided an interview as part of the Cultural Impact Assessment (Appendix F) for the EIS.

Of the recognized members of the Aha Moku Council who participated in the CIA, Mr. Nakanekua provided a discussion of Pākanaloha Heiau. The location and description of Pākanaloha Heiau is addressed in the LRFI in Section 2.4 (Walker Site 84). The heiau is located outside of the license area, on Ke'anae Peninsula. The field inspection did not include an inventory of historic properties or inspection of historic properties outside of the license area.

No other recognized members of the Aha Moku Council provided information on specific historic properties during consultation for the CIA.

In response to comments on the Draft EIS, a discussion regarding the archeological field survey and historic structure assessment has been added to Appendix E of the EIS and summarized in Section 4.5 of the Final EIS as shown in on pages 4-138 to 4-139.

As shown in the included attachment, there has been very little archaeological work within the License Area to date, and thus, very little archeological resources are known to exist within the License Area. However, based on the rich history of the region, it is assumed that archaeological

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resources do exist within the License Area. However, it is recommended that any persons who are required to enter the License Area as part of the Proposed Action or Alternatives be made aware of the potential for discovery of undocumented surface historic properties such as walls, trails, terraces, mounds, and/or caves. These structures should be avoided, protected, and reported to the SHPD. The SHPD will determine if additional mitigation is required.

Comment 5: *The EIS needs to include a discussion of secondary and cumulative impacts of the proposed lease action on historic sites, including historic trails that may be found on State or EMI land. What happens on State land can also affect historic properties, such as lo'i kalo on EMI lands and kuleana holdings that lie in the areas between the various levels of the ditch system.*

Response 5: Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter

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3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown in pages 4-331 to 4-336. With regard to the historic trails and roads that are within the License Area, Section 4.5 of the Final EIS as well as Appendix E (Archaeological Literature Review and Field Inspection) have been revised to include the current inventory of roads and trails in the License Area as shown in pages 4-147 to 4-149. CSH completed a geographic analysis of trails and roads that appear within the License Area as depicted on maps between 1869 and 1992 and available to the public domain. The majority of roads and trails within the License Area are associated with access to the EMI Aqueduct System and these road and "ditch trails" are likely contemporary with the construction of the EMI Aqueduct System.

Figure 4-39 has been added to the Final EIS to correspond with the above text (Figure 48 in Appendix E).

Comment 6: *Appendix E refers to impacts that could be caused to lands upcountry if the Leases were not granted and new wells needed to be drilled in the Upcountry area. It should also acknowledge that if the leases ARE granted, ground altering activities will be conducted in the License area AND on EMI lands and these carry the risk of impacts to historic sites if no survey has been done to identify these sites and mitigate impacts.*

Response 6: Appendix E is the Archaeological Literature Review and Field Inspection. The Proposed Action is the issuance of a Water Lease by the BLNR. The Applicant is not proposing

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to drill any wells in Upcountry Maui. As previously discussed above, the Proposed Action, including maintenance and repair of the EMI Aqueduct System, does not involve ground disturbing activity within the License Area (Maui Pono will continue to engage in agriculture in the Central Maui agricultural fields which have been continuously disturbed through historical agricultural uses for over 100 years). As discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7 of the Final EIS, under the Proposed Action, "maintenance and repair" within the License Area involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment, as has been the case for many years.

Moreover, as mentioned in Response # above, it was determined that an AIS was not needed by SHPD as the Proposed Action will not involve any ground disturbance and that the potential impact of flooding from abandoning the diversion on five streams will not be greater than periodic naturally occurring events. Thus an LRFI was prepared to support the project's environmental review compliance.

The Proposed Action will not will not include partial or total destruction or alteration of any known historic properties, detrimental alteration of the surrounding environment, detrimental visual, spatial, noise or atmospheric impingement, increasing access with chance of resulting damage, nor neglect resulting in deterioration or destruction. As such, the Proposed Action will have no impact to archaeological historic properties.

Comment 7: *EIS cannot properly evaluate the secondary and cumulative impacts on historic sites without including an AIS that is reviewed and accepted by SHPD.*

Response 7: As noted in Response #5 above, note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

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Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepeʻe, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown in pages 4-331 to 4-336.

Comment 8: *The EIS also needs to provide an inventory of historic roads and trails that exist on the State License area and on EMI lands. Such trails are historic properties protected under our state laws and also in our Community plans. We know that the lands of the License area are now*

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and were in the past a resource for the Hawaiian communities who lived along these streams. This means that there were trails and roads used to access the upper areas of the streams.

Response 8: As mentioned above in Response #5, Section 4.5 of the Final EIS as well as Appendix E (Archaeological Literature Review and Field Inspection) have been revised to include the current inventory of roads and trails in the License Area as shown in pages 4-147 to 4-149. CSH completed a geographic analysis of trails and roads that appear within the License Area as depicted on maps between 1869 and 1992 and available to the public domain. The majority of roads and trails within the License Area are associated with access to the EMI Aqueduct System and these road and “ditch trails” are likely contemporary with the construction of the EMI Aqueduct System.

Figure 4-39 has been added to the Final EIS to correspond with the above text (Figure 48 in Appendix E).

Comment 9: *EIS content requirements require that the EIS consider not just the proposed action, but also secondary and cumulative impacts that could result from the proposed action. The DEIS may discuss a lease, but the granting of that lease will result in many other activities that have the potential to impact historic sites that have not been documented.*

Response 9: Correct. EIS content requirements do call for an EIS to consider secondary and cumulative impacts as a result of the Proposed Action. The terms “secondary impacts” and “cumulative impacts” are defined above in Response # above. Secondary and Cumulative impacts are discussed in Section 4.16 of the EIS. As stated in Section 4.16.1 of the Draft EIS:

The secondary impacts of the Proposed Action primarily relate to developing diversified agriculture in Central Maui, including the economic and social impacts of diversified agriculture and job creation on Maui’s broader economy and the County’s tax revenues. These impacts are summarized in Section 4.7 Socio-Economic Characteristics based on a detailed evaluation in the Economic and Fiscal Impact Study (See Appendix H) and the Social Impact Assessment (See Appendix G).

As stated in Section 4.16.2:

The cumulative impact of the Proposed Action can be regarded as an additive impact overlaid on more than 100 years of history during which the EMI Aqueduct System was developed to provide water for the development of a sugar industry in Central Maui as well as for the later development of Upcountry Maui.

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Letter to Mr. Daniel Kanahele
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September 3, 2021

This DEIS summarizes the pertinent history in Chapters 1 and 2 as a basis for understanding the events that have shaped the existing conditions described in Chapter 4. In addition, the following studies document the pertinent history related to the sugar industry in Maui and the EMI Aqueduct System and how they have shaped existing condition:

- *Archaeological LRFI (See Appendix E) discusses the historic context of the Proposed Action;*
- *CIA (See Appendix F) also provides a historic context and documents cultural resources and practices recalled by cultural informants;*
- *HSA (See Appendix D) documents the various characteristic components of the EMI Aqueduct System that provide the historic context for the functioning system; and*
- *SIA, which discusses history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono.*

The cumulative history of the environment is reflected in the following studies:

- *Terrestrial Flora and Fauna Technical Report (See Appendix C), which describes the present composition of flora and fauna in the License Area and the agricultural fields of Central Maui that reflect the history of how they have been changed by human activity; and*
- *Assessment of the Environmental Impact of Stream Diversions on 33 East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (See Appendix A) which, likewise, documents the stream habitats of East Maui as they have been shaped by human activity.*

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Letter to Mr. Daniel Kanahele
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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: [Dick Mayer](#)
To: ian.c.hirokawa@hawaii.gov; [Public Comment](#)
Cc: ["HIOffice ofEnvironmental"](#)
Subject: East Maui Water Lease Draft-EIS - Comments
Date: Tuesday, November 5, 2019 9:18:50 PM
Attachments: [image001.gif](#)
[East Maui Water Lease Draft-EIS Nov-6-2019 Dick Mayer.docx](#)
[East Maui Water Lease Draft-EIS Nov-6-2019 Dick Mayer.pdf](#)

Subject: **East Maui Water Lease Draft-EIS** - Comments

Aloha,
Attached are my comments on the East Maui Water Lease DRAFT-EIS.
Hopefully, they will be helpful when preparing the Final-EIS.

There is both a PDF version and a MSWord version.

Best wishes, Prof. Richard "Dick" Mayer
1111 Lower Kimo Dr.
Kula, Maui, HI 96790
808-283-4376 dickmayer@earthlink.net

TO: Applicant: Alexander & Baldwin Inc. (A&B)/East Maui Irrigation Company, Limited (EMI),
Collectively referred to as "A&B" waterleaseeis@wilsonokamoto.com

Consultant: Mr. Earl Matsukawa AICP, waterleaseeis@wilsonokamoto.com (808) 946-2277,
1907 S. Beretania Street, Suite 400, Honolulu, HI 96826

Approving Agency: Mr. Ian Hirokawa, ian.c.hirokawa@hawaii.gov
And Suzanne Case, Chairperson, Hawai'i DLNR
151 Punchbowl Street, Honolulu, Hawai'i 96813

FROM: Prof. Richard "Dick" Mayer dickmayer@earthlink.net
1111 Lower Kimo Dr. Kula, Maui, HI 96790

November 6, 2019

RE: East Maui Water Lease Draft-EIS

Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomano, + Huelo License Areas

INITIAL COMMENTS

1. In the Executive Summary, page 1- 20, it is stated that BLNR on July 8, 2016 requested/instructed that A&B and EMI should proceed with the preparation of an Environmental Impact Statement. A copy of that document should be provided so that it may be determined whether the Final-EIS meets the requirements of the BLNR.
2. Was the **Final-EIS** intended to be prepared for an auction bid by A&B and EMI only? Alternatively, **was it meant to be generic**, applicable and available for anyone who makes a bid at the lease auction?

SPECIFIC CONCERNS

OWNERSHIP AND MANAGEMENT

3. The Draft-EIS has capitalized "**EMI** Aqueduct System". This implies that EMI owns the aqueduct system. What proof is there of this ownership. Would it not be more correct to say "**East Maui's** aqueduct system" which has multiple owners?
4. Page 1 - 2 in section 1.3.1 there is an assertion made that **EMI is the owner of the EMI aqueduct system**. Provide proof that this is true, especially for the lands that are within the state lease area which I believe are owned by the State and could be utilized by anyone winning the lease in competitive bidding at an auction. The **aqueduct System on State lands does NOT belong to EMI**.
5. The draft EIS implies that the East Maui aqueduct system belongs to either A&B, EMI, or Mahi Pono. Provide detailed proof of ownership of the three separate sections of the East Maui aqueduct system: **a)** The portion within the four state-owned lease areas; **b)** the portion crossing the land now jointly owned by A&B and Mahi Pono; and finally, **c)** the portion of the system running from the A&B Mahi Pono lands to the Kamole Weir water treatment plant.

East Maui Water Lease Draft-EIS Dick Mayer Page 2

6. Even though Mahi Pono (at present a 50% owner of EMI) is registered in the United States (Delaware), seemingly it is not owned by an American entity. All of the Mahi Pono lands are ultimately owned by a foreign entity, which has established a domestic USA firm to merely own this investment. An additional complication in the ownership matter is that Mahi Pono is managed/operated by California interests, named Trinitas and Pamona Farming. There should be a clear explanation of the **management and financial relationships** among all of these entities: Hawaii's A&B and EMI, Canada's PSP, California's Trinitas and Pamona Farming, and Delaware's Mahi Pono.
7. Include in the Final-EIS any documents **that prove that the land under East Maui's aqueduct system** was transferred to A&B or EMI from the Kingdom. or Republic? or Territory? or State of Hawaii?
8. At the beginning of the Final-EIS, there should be a section devoted to the **ownership of Mahi Pono**. This should include the exact relationship between the investment company PSP, the California group known as Trinitas, the many, many LLC companies with Mahi Pono in their title and who are now the owners of numerous parcels of land throughout Central and North Maui.
9. The description should include both the financial relationships among these parties and entities as well as the decision-making management hierarchy among them. There should also be a very clear indication about how A&B's REIT (Real Estate Investment Trust) is linked to all of this. Apparently, the sales agreement between the two companies A&B & Mahi Pono leaves some question about the level of land ownership, easements, and other interest being maintained and retained by A&B.
10. Because the sales agreement that was publically displayed in December-2018 left many sections undisclosed, include the ENTIRE sales agreement between A&B REIT and Mahi Pono.
11. Describe the risks to the 2,550 Maui residents who will become dependent on the Mahi Pono farm plan, if MAHI PONO determines that it is **unprofitable to maintain its farming operations**.
12. Will the value of the marketed crops and animal products be **adequate to support this larger population, while providing investor PSP with an adequate profit?**
13. Is the **1938 agreement** the Territory of Hawaii and A&B **still relevant** today? If yes, then the 1938 agreement should be attached as an appendix and there should be an explanation as to how it is still relevant. It is referred to in the Executive Summary, page 1- 6 in the 3 middle paragraphs. On the other hand, is it only a part of the historical record, and not relevant to the auction?

East Maui Water Lease Draft-EIS Dick Mayer Page 3

14. Given the fact that Mahi Pono is owned by an international entity and that the profits from this entity will leave not only Maui, but the whole United States, what is the financial impact of a lease issued to a **non-Hawaii entity**, as compared to having the water lease obtained at auction: **a) by a Hawaii-based company, or b) by a public Maui Water Authority?**
15. In Section 3.4.20 Public Water Systems: Central Maui, it is **asserted that Central Maui receives its water from the East Maui aqueduct system**. The **potable water** used in Central Maui that is delivered by the Maui Department of Water Supply does not come from the aqueduct system. It is also false to say that the EMI aqueduct system is privately owned. Much of the so-called East Maui aqueduct system is on the State lease land and is NOT privately owned.
16. The last paragraph on page 4 - 140 is very important. The paragraph is important because it points to a fairly widely held belief that the **lease could be held by a public utility such as a Water Authority or by the Maui County Department of Water Supply**. (See the Maui Board of Water Supply TIG report of October-2019.) The paragraph's last sentence makes a very important point by asking who should get the profits from the sale of water delivered to central Maui.

FINANCES

17. The Executive Summary, page 3 – 17, mentions that the cost of water to the County is now **\$0.06 MGD and that it could rise**. This could have serious effects on the ability of the County to provide water for the UpCountry region. What is the range of the maximum potential rise and how will it be calculated/negotiated?
18. Water prices are a matter of considerable interest to the UpCountry farmers who now utilize this potable water to irrigate their farms. There seems to be no way to provide farmers with non-potable water. Consequently, any rise in the rates paid by the County water department could have significant impacts. Address them in the Final-EIS.
19. On page 3-18 at the end of the next-to-last paragraph, it states that the **City of Honolulu would get a \$120,000 in tax revenues**. Please explain why they, and not Maui County, would get the funds.
20. The leaseholder will have an obligation to deliver water to the DHHL lands. Since it will be expensive to build an adequate water line from East Maui's aqueduct system to the Department of Hawaiian Homelands land in Keokea and Waiohuli, there should be a provision in the lease that will set aside funding over the years from the **license fees to construct the necessary pipeline to transmit that water** (over 10 MGD) across Kula. Please describe how that could work.

East Maui Water Lease Draft-EIS Dick Mayer Page 4

21. A missing part of the large Draft Environmental Impact Statement is any consideration of **Mahi Pono's (or any other successful bidder's) need to withdraw (cease operations) from using the East Maui water over the 30-year lease period.** It could be for reasons that are financial, agricultural, labor problems, or something else such as a sale of the Mahi Pono owned lands to some entity not interested in farming.

What would be the impact: a) on the East Maui watershed, b) the Maui County Department of Water Supply's commitment to the UpCountry water needs, c) the Hawaiian Homelands, and d) the agricultural lands now owned by Mahi Pono.

AGRICULTURE AND WATER SOURCES

22. Various numbers are utilized throughout the document to explain the size of Mahi Pono's agricultural activities. There should be a clear table that explains the different land areas that are contained in the Mahi Pono purchase. For example, out of the 41,000 acres how much of it is "**Important Agricultural Land**"? How much is classified with a **Land Productivity** of A, B, C, D, or E? How much will be irrigated by water from **East Maui's aqueduct system, versus water coming from Na Wai Eha or central Maui wells?** How much land will actually be farmed?

23. **Groundwater** from wells in Central Maui is discussed. Clarify. Does the **groundwater** from Central Maui wells also include water on the west side of Mahi Pono's land traditionally irrigated primarily from the Na Wai Eha watershed?

24. On page 4 – 5, it states that 4.9 MGD of water is delivered from **four UpCountry Wells** (Ha'iku, Po'okela and the 2 Kapakalua Wells). These wells are an important back-up source for UpCountry. How do these wells decrease UpCountry's dependence on East Maui's aqueduct system water?

25. On page 4 – 153, it states that 7.1 million gallons per day of UpCountry Maui's water comes from the East Maui irrigation aqueduct system. This is misleading since less than half of it is coming from the lease areas that are being analyzed in the EIS document. The rest is coming from other Mahi Pono lands, not the subject of this EIS. Correct this statement.

WATER USE

26. The last two paragraphs on page 4 - 140 are very important. The first of these paragraphs misleads when it says that the EMI Aqueduct System supports the two water treatment plants known as Olinda and Piiholo. That is not accurate. Both of these plants get water from lands now owned by Mahi Pono, but are NOT connected to the aqueducts coming from the East Maui lease areas.

East Maui Water Lease Draft-EIS Dick Mayer Page 5

27. Pages 4 - 148. There needs to be an explanation as to why the **Maui Water Department needs so much more water after 2008** than in 2006. Going from 3.23 MGD to 7.1 MGD in such a short time frame. Does the 7.1 MGD count the water delivered from Piiholo and Olinda? Kula Ag Park?

WORKERS AND HOUSING

28. **Sugar plantation workers** were unionized, had very high level of technical skills, maintaining machinery, driving huge trucks, etc. and were **highly paid**. What will Mahi Pono do to recruit workers who can afford to live on Maui? What are the proposed salary rates? Moreover, if **workers are paid adequate living wages**, will those salary rates allow the leaseholder to have profitable agricultural operations? Discuss the labor situation at length.

29. Page 4 – 169. There is an estimate that there will be **more workers** needed than was the case with sugarcane, and that in addition to the employees there will be indirect employment (those servicing the Mahi Pono employees).

790 farm jobs plus 350 additional indirect jobs → 1,140 workers. At least 2,550 family members.

There needs to be robust discussion/analysis about how Mahi Pono will get workers given the Maui's existing very **low unemployment rate**. How many workers will need to be imported?

30. A very important consideration that has been left out entirely is **housing** for all of the new imported employees and their families. Not only will workers find it difficult to find a house, but they also will add to the pressure on the existing labor force who are seeking affordable housing.

31. **4 – 144, plus 4 - 145** refer to **labor problems and housing issues**. This should be a valuable and important part of the environmental impact statement. Unfortunately, there is no indication of how these issues will be handled (mitigated) in the future. There is a now shortage of workers on Maui and there is a very significant shortage of affordable housing for these employees. These very important impacts have NOT been mitigated, nor even addressed.

WATER USE AND CONSUMERS

32. Reviewers of the Final-EIS will need to know **who might be consuming the water** being delivered from East Maui. For example, the Maui Water Department, Mahi Pono for the use on its agricultural fields, the Kula agricultural Park and it's future extension, Hawaiian Homelands (both UpCountry in Keokea and in Central Maui at Pulehunui), Nahiku residents. **Anyone else?** Only then can we know the impacts that these waters would have.

East Maui Water Lease Draft-EIS Dick Mayer Page 6

33. Provide a detailed listing of those entities that would have access to the water and **what they will be paying for that water**. At what **rates per 1,000 gallons will water be sold to each**? The same rate for each purchaser?
34. Be very specific as to whether there are any other potential users of the water. For example, A&B for use on its agricultural properties? Or A&B for use on **any non-agricultural development project**? Any other entity that might utilize the water for future non-agricultural developments?
- To determine all the potential environmental impacts and if Mahi Pono gets the East Maui lease at auction, **is A&B expecting to receive any water**? If yes, will the water be used for any non-agricultural development?
35. Describe the **impacts and implications if Mahi Pono decide that it no longer wants or needs the water** for agricultural uses. Could it be used for other purposes?
36. **Would the aqueduct system continue to be maintained** which may be necessary for both the Maui County Department of Water supply and for the Hawaiian homelands?
37. The paragraph at the top of page 4 - 58 makes it clear that CWRM considered it important to **allow water to be utilized on the IAL lands in Central Maui**. It did not make any provision for the use of water for any other Central Maui lands. The Final-EIS should differentiate between the IAL lands, and other Mahi Pono lands and water needs/uses in Central Maui.
38. In the Executive Summary, near the top of page 2 – 4, it indicates that the **DHHL staff has identified a need in the future for over 11 million GPD**. What effect will DHHL's needs (which by law must be satisfied) have on the Central Maui agricultural operations and on Mahi Pono's profitability?
- Describe the **specific impact that would take place when DHHL indicates that they wish to have the required 11 million gallons of water per day** for their use in Keokea and Pulehunui. What will be the effect at that time on the agricultural operations of Mahi Pono?
39. The discussion at the bottom of page 3 - 19 is **intended to significantly scare UpCountry farmers**. Since the majority of the water used in the UpCountry area does not come from the East Maui lease areas, the threat is not as dire as stated in the Draft. Please correct.
40. At present, about 17,000 acres of EMI lands are owned **50/50 by Mahi Pono and A&B**. How long will this last? What will happen after Mahi Pono becomes a 100% owner and how would that affect the water lease? Will A&B, (now a Real Estate Investment Trust (REIT), retain **any rights to the water**? Will A&B receive any discounted rates for the use of that water? Will they be able to use the water for non-agricultural purposes?

East Maui Water Lease Draft-EIS Dick Mayer Page 7

41. It seems that the estimate for the **future payments by Mahi Pono** to the Department of Land and Natural Resources for the water is **absurdly low**. On page 4 - 150, they are estimating the cost to be \$0.10 per thousand gallons, giving the State an annual revenue of **only** about \$268,000 in 2030.
This figure might make agricultural production very profitable, but it would deny DHHL the funds needed to bring water to the Hawaiian Homelands areas. That would be a serious negative impact, but would make Mahi Pono's investor very profitable.
42. On **page 4-150 and PDF pages 1777 + 1780**. It is unclear how the number \$846,700 was calculated or obtained. What is the referenced "Special Land Development Fund"? How is it different from the annual cost for the water lease?
43. On page 4 – 153, it is stated that there are 830 businesses in UpCountry Maui, generating an annual payroll of \$232 million. This seems very, very high. Consequently, an accurate source should be provided for these numbers, not just "Gale Cengage Learning".
44. On page 1793, 2nd paragraph, last word should be **billion**, not **million**.

MISCELANEOUS

45. The executive summary states in the second paragraph that no construction activity will be required. It seems that this is incorrect since there will be considerable construction activity to reconfigure many of the diversions, to close down a number of the diversions and to repair the ditch system where it leaks, and to restore reservoirs and irrigation systems. **Construction has impacts; what are they?** How will they be mitigated?
46. Because water has high value, indicate the potential for building **new reservoirs, water tanks and lining the existing reservoirs** throughout Central Maui. These one-time costs may provide considerable benefits and reduce negative impacts over the length of the lease and even thereafter.
47. It is mentioned several times that the food supply will be for **local** consumption. However, nowhere is it defined **what local means**. Does it mean Maui Island? Maui County? Or the State of Hawaii? Or something else?
48. The EIS states that there will be **250 acres** utilized for a **utility-scale solar PV operation**. The Solar PV developer AES has stated publicly that there will be about **500 acres** needed for that project. Please explain the difference.
49. There is a recommendation to form a **Core Working Group** made up of residents and communities that will be affected by this lease. The Final-EIS should make provision for how this group will be formed and how the leaseholder will utilize its input. Will their recommendations be merely studied or actually implemented? Will the leaseholder commit to financially helping to facilitate the Core Working Group's activities?

East Maui Water Lease Draft-EIS Dick Mayer Page 8

50. Executive Summary, page x. Will the leaseholder assist getting the **Core Working Group** into action as well as helping the Keanae and Wailua communities to move past historical impacts?
51. On the third line of the Executive Summary page xiii, the use of the word "**commercial**" raises a number of questions that are not examined elsewhere. Why is it being used here? What are the implications?
52. There are several references at the end of chapter 3 to the fact that the federal government's regulations allowing **herbicides and pesticides** means that there will be no environmental impacts. This is false since the federal government has permitted the use of toxic herbicides that have been shown (in several court cases) to cause severe health problems and the death of individuals.
- I am an example of that problem. Having used Monsanto's herbicide Roundup, I was diagnosed with stage 4 Non-Hodgkin's lymphoma, and I (and 40,000 other people) am now a plaintiff in a lawsuit against Monsanto for damages. The federal government's blessing and herbicide approval does not eliminate negative impacts that must be evaluated in the Final-EIS.
- There needs to be a strong statement in the Final-EIS that makes it very clear that Monsanto's **herbicide Roundup** or its generic versions will NEVER be used in the East Maui watershed. This overused chemical has been proven to be a cause of cancer. I am a personal victim.
53. Section 3.4.19 **Traffic**. There is a ridiculous assertion that there will be no traffic impact. However, the Draft-EIS also makes the claim that there will be an additional 2,550 individuals, if the lease is issued. How can it then assert that there will be no traffic impact? There certainly will be, and it needs to be discussed because Maui's roads are already crowded.
54. Somewhere in the introductory chapters of the environmental impact statement there should be a clear statement that these auctioned "**public waters**" are for potentially private use and sale. They are governed by the State of Hawaii's "**public use**" doctrine. Implications and impacts of that doctrine on the lease of these waters needs to be clearly explained and legally defended.
55. With regard to 3.4.1 Public Services and Facilities, it is stated that there will be no impacts. Since we now have full employment on Maui Island, it can be presumed that the impacts will come from the additional 2,550 additional residents resulting from the Mahi Pono operations. Such a large number of **additional Maui Island residents will have numerous public services and facility impacts**, ranging from schools, playgrounds, traffic, potable water needs, wastewater, solid waste, to both police and fire protection.

East Maui Water Lease Draft-EIS Dick Mayer Page 9

56. Figure 4-1 on PDF 115 only has the green areas indicated. The developed areas in blue are not disclosed. Show the "Developed open space."

57. Chapter 5 I was the Vice-Chairman of the General Plan Advisory Committee that developed the Countywide Policy Plan and the Maui Island Plan. In Chapter 5, the East Maui Water Lease Draft Environmental Impact Statement makes a mockery of the goals and objectives that are found in the two plans.

Whenever there is a policy or objective in the table that would violate the two plans, the Draft-Environmental Impact Statement merely states that the goal or objective is "**N/A**" (**Not Applicable**). There are dozens of instances of this avoidance of compliance with the Maui Island Plan and the Countywide Policy Plan. Do you see even ONE instance where they show any impact? The tables are majorly incorrect, misleading and dishonest

If the Final-EIS persists in indicating that either or both the Maui Countywide Policy Plan or the Maui Island Plan do not have any negative impacts from an East Maui Water Lease, then it will be challenged vigorously as being a whitewash and unresponsive to the Maui County General plan.

The policies and objectives of the two plans will be seriously impacted and violated. The fact that water has been removed from East Maui for over a century, coupled with the fact that less water will now be withdrawn, does not mean there will be no or a low level of impacts. The Final-EIS should make that clear and also indicate how those impacts will be mitigated. Impacts need to be addressed.

59. In Appendix G on page 106, there is a very useful recommendation to form a Core Working Group. The paragraph headed by the word "Transparency", discusses a long-standing problem with skepticism over the water withdrawals that have been held in the past. The exact statement reads as follows, "The proposed action has elicited skepticism and distrust over many decades, and these feelings prevent willingness for participating in mediation and collaboration. While developing trust among the various groups will be challenging, the first step is transparency. Being open about intent, plans and activities can begin to establish credibility and open the door to dialogue."

This is an insightful recommendation and needs to be followed up, earlier rather than later. Many issues will arise over the succeeding months and years, before and after the lease is issued. There needs to be an excellent relationship between the leaseholder and the broader Maui community. The leaseholder should not be afraid to create the recommended Core Working Group that will serve not just as a "yes" sounding board. It should be a group that can critique operations, evaluate lease compliance and provide useful advice that must be handled appropriately by the leaseholder.

East Maui Water Lease Draft-EIS Dick Mayer Page 10

60. Missing from the Draft-EIS is a comprehensive analysis of the effects on Maui's economy of having a water lease controlled by an off-island entity. If the water lease is obtained by a non-Maui or non-Hawaii entity whether it be based in California or Montreal, there are significant impacts to Maui's economy that need to be understood, analyzed, and if necessary, mitigated.

Presumably, the use of the water from the lease areas will generate very sizable profits. If these profits are going to be shipped elsewhere as now happen so often with Maui's many off-island, owned hotels, there would be negative impacts by comparison to having that water utilized and operated by a Water Authority or some other institution that is locally based. Revenues and profits would circulate and multiply on-island.

Because of this impact of exported, disappearing profits, the Final-EIS must describe how those funds could remain in Maui and benefit the residents of Maui, solving problems such as affordable housing, highways, infrastructure, etc. Profits draining away from our tourist industry have resulted in local residents being unable to afford a home. Similarly, an off-island leaseholder could do similar damage to its own employees who would have difficulty purchasing or even renting a home.



10238-04
September 3, 2021

Professor Richard Mayer
1111 Lower Kimo Drive
Kula, HI 96790
dickmayer@earthlink.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Professor Richard Mayer:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *In the Executive Summary, page 1- 20, it is stated that BLNR on July 8, 2016 requested/instructed that A&B and EMI should proceed with the preparation of an Environmental Impact Statement. A copy of that document should be provided so that it may be determined whether the Final-EIS meets the requirements of the BLNR.*

Response 1: The Board of Land and Natural Resources' (BLNR) order instructing A&B to prepare an EIS does not inform the decision as to whether the Final EIS meets the legal requirements that BLNR must consider in determining whether the Final EIS is acceptable. Nevertheless, a copy of the BLNR order, as well as the submitted scope of work that was approved, is enclosed as Attachment #1 in response to your request. The determination on acceptance of the Final EIS is based on the minimum content requirements pursuant to Hawai‘i Revised Statutes (HRS) Chapter 343 and HAR Title 11, Chapter 200. Both the Draft EIS and the Final EIS provide a content checklist showing compliance with the minimum content requirements and where that information is presented in the EIS.

10238-04

Letter to Professor Richard Mayer

Page 2 of 50

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Comment 2: *Was the **Final-EIS** intended to be prepared for an auction bid by A&B and EMI **only**? Alternatively, was it meant to be generic, applicable and available for anyone who makes a bid at the lease auction?*

Response 2: The EIS was prepared to support the application for the issuance of a long-term Water Lease of the State's License Area streams through the EMI Aqueduct System for the purpose of providing water to the County of Maui Department of Water Supply (MDWS) for its Upcountry Maui Water System, and to Central Maui for agricultural purposes, described in the EIS as the Proposed Action. Moreover, the Water Lease will ensure that the Nāhiku community served by MDWS continues to have a reliable source of potable water for domestic needs. The EIS also contemplates the environmental effects of variations on the Proposed Action, including scenarios where the amount of water permitted for lease is insufficient for the Mahi Pono farm plan as proposed. Thus, the EIS analyzes proposed uses of the water, but is not necessarily tied to a specific Water Lease lessee (although the EIS explains how A&B, on May 14, 2001, requested that the State offer at public auction a long-term water lease under HRS Section 171-58 for the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System). Any party who intends to use the water in a manner consistent with the EIS analysis could, presumably, bid on the Water Lease at public auction.

Comment 3: *The Draft-EIS has capitalized "**EMI** Aqueduct System". This implies that EMI owns the aqueduct system. What proof is there of this ownership. Would it not be more correct to say "**East Maui's** aqueduct system" which has multiple owners?*

Response 3: The EMI Aqueduct System is owned and operated by the East Maui Irrigation Company, LLC. Please note that the 1938 Agreement between A&B / EMI (referred to as "the Company") and the Territory of Hawai'i, which has been added to the Final EIS as Appendix R, acknowledges EMI's ownership of the EMI Aqueduct System. Pursuant to the 1938 Agreement, the Territory of Hawai'i (now the State) granted perpetual easements to EMI for the placement of the EMI Aqueduct System. See EIS Section 3.3.

As described in Section 2.1.2 of the Draft EIS, the EMI Aqueduct System spans both State-owned and EMI-owned lands and is an integrated system. The Collection Area for the EMI Aqueduct System covers approximately 50,000 acres, of which 33,000 acres are owned by the State and 17,000 acres are privately owned. See Draft EIS Figure 1-1 (EMI Aqueduct System Collection Area). As mentioned above, under the 1938 Agreement, the State and EMI each granted to the other "perpetual" easements to those portions of the EMI Aqueduct System located on the other's land. The duration of these "perpetual" easements was stipulated to last until the termination of the 1938 Agreement. The 1938 Agreement is still in place and valid.

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The State may, but is not obligated to, terminate the 1938 Agreement only if the licenses are offered at auction but EMI fails to bid. EMI may, but is not obligated to, terminate the 1938 Agreement if the State fails to offer the licenses at auction. Thus, if no license is offered at auction, the 1938 Agreement provides that EMI may still collect water derived from the EMI-owned portions of the Collection Area and, utilizing the easement granted to it in the 1938 Agreement, transport it across the portions of the EMI Aqueduct System that transverse State lands.

The 1938 Agreement defines the “Territory” to include its “successors” (i.e., the State). EMI has not failed to bid at any auction of licenses, so the condition precedent for the State to have the right to terminate has not occurred. While the State has not yet offered the licenses at auction, EMI has not exercised its right to terminate and is instead a proponent of the Proposed Action which would lead to the licenses being offered at auction for the purpose of the continued integrated operation of the EMI Aqueduct System. Neither party has terminated the 1938 Agreement. Please note that this clarification has been added to Section 3.3 of the Final EIS as shown in pages 3-24 to 3-25.

Comment 4: *Page 1 - 2 in section 1.3.1 there is an assertion made that **EMI is the owner of the EMI aqueduct system.** Provide proof that this is true, especially for the lands that are within the state lease area which I believe are owned by the State and could be utilized by anyone winning the lease in competitive bidding at an auction. The aqueduct System on State lands does NOT belong to EMI.*

Response 4: Regarding your comment about proof of ownership for the EMI Aqueduct System, please refer to Response #3 above and Appendix R of the Final EIS. Therefore, anyone who is successful in obtaining a water lease at auction would require permission from EMI to use the EMI Aqueduct System if their proposed use includes utilizing the system. Regarding your comment about the “lease area” being owned by the State, you are correct. The “lease area” or what is referred to as the License Area within the EIS, is approximately 33,000 acres owned by the State under the jurisdiction of the Department of Land and Natural Resources (DLNR).

Comment 5: *The draft EIS implies that the East Maui aqueduct system belongs to either A&B, EMI, or Mahi Pono. Provide detailed proof of ownership of the three separate sections of the East Maui aqueduct system: a) The portion within the four state-owned lease areas; b) the portion crossing the land now jointly owned by A&B and Mahi Pono; and finally, c) the portion of the system running from the A&B Mahi Pono lands to the Kamole Weir water treatment plant.*

Response 5: As discussed in Response #3 above, the EMI Aqueduct System is completely owned by EMI including across the sections you reference in Comment #5 above. See Appendix

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R to the EIS. Your comment does not offer any examples of this alleged implication of other ownership, therefore we cannot respond with greater specificity than has already been provided in our prior responses.

Comment 6: *Even though Mahi Pono (at present a 50% owner of EMI) is registered in the United States (Delaware), seemingly it is not owned by an American entity. All of the Mahi Pono lands are ultimately owned by a foreign entity, which has established a domestic USA firm to merely own this investment. An additional complication in the ownership matter is that Mahi Pono is managed/operated by California interests, named Trinitas and Pamona Farming. There should be a clear explanation of the **management and financial relationships** among all of these entities: Hawaii's A&B and EMI, Canada's PSP, California's Trinitas and Pamona Farming, and Delaware's Mahi Pono.*

Response 6: The management and financial relationships among the entities you listed are beyond the scope of the EIS, as those issues are not relevant to the analysis of environmental impacts. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'ānae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 7: *Include in the Final-EIS any documents **that prove that the land under East Maui's aqueduct system** was transferred to A&B or EMI from the Kingdom. or Republic? or Territory? or State of Hawaii?*

Response 7: Regarding Comment #7, please refer to Response #3 above. The 1938 Agreement has been appended to the Final EIS as Appendix R. As discussed above, the EMI Aqueduct System is owned by EMI. However, the EIS acknowledges that the some of the lands underlying the EMI Aqueduct System are owned by the State. Pursuant to the 1938 Agreement, the Territory of Hawai'i (now the State) granted perpetual easements to EMI for the placement of the EMI Aqueduct System.

Comment 8: *At the beginning of the Final-EIS, there should be a section devoted to the **ownership of Mahi Pono**. This should include the exact relationship between the investment company PSP, the California group known as Trinitas, the many, many LLC companies with Mahi Pono in their title and who are now the owners of numerous parcels of land throughout Central and North Maui.*

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Response 8: Please refer to Response #6 above. Examination of the ownership of Mahi Pono is not within the scope of the EIS. The relevant trigger for the preparation of this EIS is the use of State land, i.e., use of government waters and land, for the purposes described in the EIS. The environmental impacts of the proposed Water Lease analyzed in the EIS.

Moreover, as explained in Section 1.1 of the EIS, Mahi Pono is affiliated with Canada's Public Sector Pension (PSP) Investment Board and California-headquartered Pomona Farming. "Mahi Pono" as used in the EIS, refers to MP Central A, LLC, MP Central B, LLC, MP CPR, LLC, MP East A, LLC, MP East B, LLC, MP West, LLC, and MP EMI, LLC (either individually or collectively).

Comment 9: *The description should include both the financial relationships among these parties and entities as well as the decision-making management hierarchy among them. There should also be a very clear indication about how A&B's REIT (Real Estate Investment Trust) is linked to all of this. Apparently, the sales agreement between the two companies A&B & Mahi Pono leaves some question about the level of land ownership, easements, and other interest being maintained and retained by A&B. Because the sales agreement that was publically displayed in December-2018 left many sections undisclosed, include the ENTIRE sales agreement between A&B REIT and Mahi Pono.*

Response 9: Please refer to Response #6 above. To examine the ownership of Mahi Pono and its financial relationships, as well as its management hierarchy is not within the scope of the EIS. Similarly, A&B's status as a REIT is not relevant to the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System. Should the BLNR issue the proposed Water Lease, the lessee will be required to comply with its terms irrespective of internal financial or management matters.

Regarding your comment about the sales agreement between A&B and Mahi Pono and some questions about land ownership, please note that all of the land subject to assessment under this EIS that was previously owned by A&B in sugar cultivation is now owned by Mahi Pono. The sales agreement itself is not material or relevant to the EIS and does not impact or change the anticipated environmental impacts of the Proposed Action.

Comment 10: *Describe the risks to the 2,550 Maui residents who will become dependent on the Mahi Pono farm plan, if MAHI PONO determines that it is unprofitable to maintain its farming operations.*

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Response 10: Regarding your comment about "risks" to 2,550 Maui residents, we assume you are referring to the estimated number of people who will be supported by the projected 1,140 jobs generated from full operation of the Mahi Pono farm plan. Please note that these numbers are based on the analysis conducted for the Economic and Fiscal Impact Study report included as Appendix H, as well as the Agricultural and Related Economic Impacts report included as Appendix I, and summarized in Sections 4.7.3 and 4.7.4 respectively. At full operations, the Mahi Pono farm plan is anticipated to generate 790 direct jobs and 350 indirect jobs. It is further estimated that the combined direct and indirect jobs would support approximately 2,550 residents of the State. However, Mahi Pono, as with any other business operation, will scale its staffing appropriately. The risks, therefore, would be similar to that of any other business. Potentially slightly less, however, as evident by the dramatic impact of the COVID-19 pandemic on the Maui's tourist economy, and the fact that food demand remains more constant even during extraordinarily turbulent periods in the economy.

Please note that in its first 18 months of existence Mahi Pono has hired over 200 workers, all of whom were living on Maui when hired. They were attracted by the type of work, wages and benefits.

Based on past hiring, nearly all future employees are expected to come from Maui. Also, attracting workers should be easier than in the recent past because of the long-term adverse economic effects of COVID-19 on tourism and Maui's economy. It may take years to rebuild the economy, and the Mahi Pono farm plan will contribute significantly to this rebuilding.

Comment 11: *Will the value of the marketed crops and animal products be adequate to support this larger population, while providing investor PSP with an adequate profit?*

Response 11: Mahi Pono anticipates that revenues from selling crops and animals are expected to be sufficient to cover wages, expenses, taxes, etc., and provide a return to investors.

Comment 12: *Is the 1938 agreement the Territory of Hawaii and A&B still relevant today? If yes, then the 1938 agreement should be attached as an appendix and there should be an explanation as to how it is still relevant. It is referred to in the Executive Summary, page 1- 6 in the 3 middle paragraphs. On the other hand, is it only a part of the historical record, and not relevant to the auction?*

Response 12: The 1938 Agreement is still relevant and in effect and a copy has been provided as Appendix R to the Final EIS. As discussed in Response #3 above, according to the terms of the 1938 Agreement, the Territory (now the State) may, but is not obligated to, terminate the 1938 Agreement only if the licenses are offered at auction and EMI fails to bid. EMI may, but is not

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obligated to, terminate the 1938 Agreement only if the State fails to offer the licenses at auction. Thus, if no license is offered at auction, the 1938 Agreement provides that EMI may still collect water derived from the EMI-owned portions of the Collection Area and, utilizing the easement granted to it in the 1938 Agreement, transport through the length of the EMI Aqueduct System that transverses the Collection Area.

The 1938 Agreement defines the “Territory” to include its “successors” (i.e., the State). EMI has not failed to bid at any auction of licenses, so the condition precedent for the State to have the right to terminate has not occurred. While the State has not yet offered the licenses at auction, EMI has not exercised its right to terminate and is instead a proponent of the Proposed Action which would lead to the licenses being offered at auction for the purpose of the continued integrated operation of the EMI Aqueduct System. Neither party has terminated the 1938 Agreement.

Comment 13: *Given the fact that Mahi Pono is owned by an international entity and that the profits from this entity will leave not only Maui, but the whole United States, what is the financial impact of a lease issued to a non-Hawaii entity, as compared to having the water lease obtained at auction: a) by a Hawaii-based company, or b) by a public Maui Water Authority?*

Response 13: Please note that the lessee of the proposed Water Lease will pay lease rent to the State. Moreover, the Office of Hawaiian Affairs (OHA) should receive 20 percent of the Water Lease rents while the Department of Hawaiian Home Lands (DHHL) should receive 30 percent of the water lease rents. The DHHL funds are deposited into the Native Hawaiian Rehabilitation Fund pursuant to Hawai‘i State Constitution Article XII, Section 1, and is used to fund programs as prioritized in the Native Hawaiian Development Program Plan adopted by the Hawaiian Homes Commission. The financial impacts of the Water Lease as contemplated under the Proposed Action are discussed in detail in the analysis conducted for the Economic and Fiscal Impact Study report included as Appendix H and is summarized in Section 4.7.3 of the EIS. These are the expected impacts of the Proposed Action, regardless of whether the Water Lease lessee is a Hawai‘i entity or otherwise. Specifically, Section 4.7.3 discusses the impacts of the Proposed Action, including a discussion of operational costs, revenue, employment and earnings related to the EMI Aqueduct System; agricultural operations in Upcountry Maui, Central Maui, and East Maui (i.e., taro cultivation); and the impact on public/domestic water supplies (and related issues) in Nāhiku and Upcountry Maui.

Specifically, Section 4.7.3.1 of the Draft EIS as it relates to EMI states:

Total operational costs for EMI labor, fringe benefits, materials, professional services, taxes, Water Lease, and other expenses are projected to be \$2.3 million

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per year. This would translate to \$0.068 per kgal. A currently unknown factor in EMI's operating cost is the annual Water Lease payment to DLNR. For the purposes of the economic impacts analysis, the Water Lease payment has been calculated based on the equivalent per unit cost under the existing 2019 revocable permit. The revocable permit rent payment set in November 2018 for calendar year 2019 was \$230,964.24, which represents an increase from the rent that was previously paid. Assuming 16.8 MGD is diverted under the 2019 revocable permit, the Water Lease rent rate would translate to \$0.038 per thousand gallons. This rate of \$0.038 is assumed as the basis for the future annual lease payment to the DLNR. However, the actual Water Lease rental amount will be based on an appraisal conducted prior to issuance of the Water Lease. Should the Water Lease amount be higher or lower, the operational costs of the EMI Aqueduct System would be adjusted accordingly.

Direct spending by EMI, excluding the long-term Water Lease payments to the State from the operational costs, is forecasted to be \$1.4 million. Total direct spending and indirect sales is estimated at \$3.2 million, of which \$2.6 million would be on Maui.

EMI is expected to employ a staff of 17 people with a payroll of \$0.8 million. Total direct and indirect jobs was 24, with an associated payroll of \$1.1 million. The direct and indirect jobs associated with EMI operations would support an estimated 54 residents.

Fiscal impacts under the Proposed Action assume that the rate the MDWS pays to EMI will increase because EMI's per unit operating cost will increase as the fixed costs will be spread out over a lower volume of water diverted and possible higher Water Lease payments to the State compared to historic payments. It is estimated that EMI's operating cost under the Proposed Action would be \$0.068 per kgal, which is higher than the current MDWS payment to EMI of \$0.06 per kgal. The actual rate the MDWS will pay to EMI in 2030 will be subject to a future agreement between the parties. However, for the purposes of the fiscal impacts analysis, the 2030 water service fee rate is estimated to be \$0.10, which has been calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, EMI would receive an estimated \$268,000 in 2030 from the MDWS.

The amount paid to the State Special Land Development Fund for the Water Lease would be based on an appraisal conducted prior to issuance of the Water

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Lease. Assuming the amount of the Water Lease is based on the equivalent per unit cost under the existing revocable permits, the annual payment to the Special Land Development Fund would be \$846,700. Of this, \$169,300 would be disbursed to OHA and \$254,000 would be set aside for the DHHL. GET revenue would be estimated at \$37,000 while payroll tax would be \$45,400 per year.

However, please note that the above has been revised to take into account the rates charged under the current revocable permits, as approved by the BLNR in November 2020 as shown in pages 4-277 and 4-283.

As it relates to East Maui:

The taro farms and other farms in East Maui that depend on stream flows would produce at full development about 1.0 million pounds per year of taro, and about 400,000 pounds per year of other crops. The resulting direct sales would be about \$1.4 million per year. Indirect sales generated by the purchase of goods and services would be about \$1.5 million per year. Thus, total direct and indirect sales would be about \$2.9 million per year (with rounding), of which about \$2.3 million would be on Maui and \$500,000 on O'ahu. Profits from farm operations and indirect sales would be about \$300,000.

Full development of the taro farms and other farms in East Maui that depend on stream flows would result in about 14 jobs and generate about 7 indirect jobs, for a total of about 21 jobs. The payroll is expected to reach about \$500,000 for the direct jobs and \$800,000 for all direct and indirect jobs. The direct and indirect jobs provided will support an estimated 47 residents, most of which would be on Maui.

Given the small population of Nāhiku and the lack of commercial land uses, the economic impacts to Nāhiku under the Proposed Action, where water continues to be provided to the community, are considered negligible.

In terms of fiscal impacts, the taro farms and other farms in East Maui that depend on stream flows would generate approximately \$67,000 per year in State taxes at full development. For the County of Maui, property taxes will total about \$100 per year. The City and County of Honolulu will derive about \$300 per year from the excise tax surcharge. Given the small population of Nāhiku and the lack of commercial land uses, the fiscal impacts to Nāhiku under the Proposed Action,

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where water continues to be provided to the community, are considered negligible.

However, please note that the above has been updated to take into account the updated East Maui farming analysis based on comments received to the Draft EIS as shown in pages 4-288 to 4-293, recognizing modest increases in potential taro and truck farming in East Maui.

As it relates to Upcountry Maui:

Under the Proposed Action it is assumed that MDWS will continue to have access of up to 7.1 mgd through the EMI Aqueduct System. The County of Maui projects that the population in the Upcountry Maui Service Area will grow to approximately 43,700 in 2030, translating to an estimated 16,700 households. Assuming a median household income of \$77,400, households in the Upcountry Maui Service Area are anticipated to have a collective income of \$1.3 billion and consumption expenditures of \$710.0 million. Residential property values within Upcountry Maui are estimated to grow to \$2.7 billion.

Assuming proportional growth in line with population, there will be an estimated 1,100 businesses in Upcountry Maui in 2030, employing 6,700 individuals. Total payroll would be estimated at \$304.9 million, while direct sales associated with these businesses would be \$1.1 billion. Commercial property values within Upcountry Maui are estimated to grow to \$180.9 million.

In total, direct sales from residents' consumption expenditures and Upcountry Maui businesses are estimated at \$1.6 billion and residential and commercial property value is approximately \$2.9 billion.

Fiscal impacts to Upcountry Maui arise from the assumption that the MDWS will need to develop 7.95 mgd of new water sources to meet future demands through 2030 (even with the continued supply of 7.1 mgd from the EMI Aqueduct System under the Proposed Action). The Brown and Caldwell analysis indicates that incremental basal wells would be a strategy to meet future demands assuming no reduction in surface water flows. Under the Brown and Caldwell analysis, the life-cycle unit cost of developing and operating wells is \$34 per kgal. It is noted that the life-cycle unit cost to develop new water for Upcountry Maui customers is high. In comparison, a similar analysis conducted for the Central Maui Water System showed a unit cost of less than \$10 per kgal, or less than one third the cost of Upcountry Maui water development (Brown and Caldwell, 2014). The total

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life-cycle cost for 7.95 mgd of new wells is \$1.2 billion. The life-cycle cost is expressed as the net present value of all the costs incurred over 25 years, including capital, operating, and maintenance costs.

As previously mentioned, the rate that the MDWS pays to EMI will increase by 2030 because it is assumed that EMI's per unit operating cost will increase under the Water Lease. The actual rate the MDWS will pay to EMI will be subject to a future agreement between the two entities. However, for the purposes of this analysis, the 2030 water service fee rate is estimated to be \$0.10, which has been calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, the MDWS would pay an estimated \$268,900 per year to EMI.

Water service rates vary by class of users (i.e., residential, commercial, agricultural, etc.). The average the MDWS water service rate Countywide is \$4 per kgal. Inasmuch as the same water rates are charged across the nine water systems in Maui County, there are many factors that determine the water service rate. Therefore, it is difficult to predict what the water service rate would be in 2030. However, it is noted that the life-cycle unit cost to develop new water for Upcountry customers of \$34 per kgal far exceeds the current average water service rate of \$4 per kgal. It is assumed that the MDWS would seek a variety of funding sources to cover the cost to develop new wells. This may include County capital improvement program funds as well as State and/or Federal funds.

Nevertheless, due to the significant cost of new water source development, it would be reasonable to expect that water service rates would increase in the future to offset the costs of new water sources. As noted above, the County's water rate structure is uniform for all customers; water rates are not dependent on the service area a customer is located in (Brown and Caldwell, 2014). Therefore, under the MDWS' current rate structure, the increases would apply Countywide because rates do not vary by service area.

However, please note that the above has been revised to take into account the rates charged under the current revocable permits, as approved by the BLNR in November 2020 as shown in pages 4-277 and 4-283.

As it relates to Central Maui:

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At full operations, the Mahi Pono farm plan will cause a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops. Annual sales are expected to reach \$155.9 million. The pastures would support a cattle herd of about 7,300 cow-and-calf animal units, produce over 4,300 calves per year, and generate revenues of about \$4.8 million per year. The solar farm would generate about 82,125 mW of electricity per year, with revenues of about \$8.2 million per year. Combined farm and energy revenues would reach \$168.9 million per year in direct sales (far exceeding the 2006 revenues from sugar production of \$101 million, and the \$116 million average for the 2008 to 2013 period).

Purchases of goods and services by farmers and the families of employees would generate indirect sales and, in turn, these suppliers would generate more indirect sales by their purchase of goods and services. The indirect sales are estimated at about \$160.7 million per year. Total direct and indirect sales would be about \$329.5 million per year, of which about \$273.3 million would be on Maui and about \$56.2 million on O'ahu. Profits from farm operations, energy operations, and indirect sales would be about \$33 million.

At full operations farm employment is expected to reach about 790 jobs (about 160 more than provided by sugar operations in 2006). The jobs would be typical of those provided by diversified-crop farming and ranching-managing soils and pests, operating and maintaining irrigation systems, planting crops, pruning trees, harvesting crops, sorting and washing crops, packing crops, trucking crops to markets and shipping terminals, moving cattle among pastures, maintaining fences, marketing, accounting, etc.

The purchase of goods and services by farmers and ranchers and by the families of their employees would generate an estimated 350 jobs. In total, about 1,140 direct and indirect jobs would be supported, including about 1,000 jobs on Maui. Payroll is estimated at \$45.3 million for all direct and indirect jobs. The direct and indirect jobs would support an estimated 2,550 residents.

Regarding fiscal impacts at full operations, diversified agricultural operations in Central Maui would generate an estimated \$4.5 million in State tax revenues by 2030. Property taxes paid by to the County of Maui would be about \$800,000 per

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year, and the City and County of Honolulu would derive about \$140,000 per year from the excise tax surcharge.

However, please note the above has been updated to include a statement about COVID-19 and potential impacts on the economy as it relates to the Proposed Action as shown on page 4-287.

Regarding your comment about a public water authority having ownership of the EMI Aqueduct System, please note that Section 3.1.2 of the Draft EIS considered alternative ownership of the EMI Aqueduct System which has been updated in the Final EIS as shown in pages 3-19 to 3-20 to acknowledge the County of Maui, Board of Water Supply Temporary Investigative Group (TIG) Report dated October 17, 2019 that was made available after the publication of the Draft EIS..

Comment 14: *In Section 3.4.20 Public Water Systems: Central Maui, it is asserted that Central Maui receives its water from the East Maui aqueduct system. The potable water used in Central Maui that is delivered by the Maui Department of Water Supply does not come from the aqueduct system. It is also false to say that the EMI aqueduct system is privately owned. Much of the so-called East Maui aqueduct system is on the State lease land and is NOT privately owned.*

Response 14: As explained in the EIS, the term "Central Maui" as used in the EIS refers to the approximately 30,000 acres of agricultural lands (formerly in sugarcane) in Central Maui that Mahi Pono is using and will use to implement its diversified farm plan. Specifically, this is mentioned in Chapter 4, which states:

For the purposes of this DEIS, Central Maui is comprised of the approximately 30,000 acres of agricultural land that had been cultivated with sugarcane for over a century utilizing water from the EMI Aqueduct System. Geographically, what is referred to as Central Maui encompasses approximately 36,000 acres, but approximately 6,000 acres is comprised of uncultivated areas, including roads, gulches, and patches of uncultivated land as shown in Figure 4-1.

The above statement has been added to the Executive Summary to clarify the context of the Central Maui reference as shown in pages iii to iv. Similarly, the Executive Summary also clarifies what the EIS defines as East Maui and Upcountry Maui. Furthermore, added clarifications have been made to indicate that when Central Maui is being discussed, it is in reference to the approximately 30,000 acres of agricultural fields owned by Mahi Pono. With that fundamental understanding, which is consistent throughout the EIS, the statement in Section

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3.4.20 is correct in that neither the Proposed Action nor the alternatives are expected to have a significant adverse effect on public water systems because the EMI Aqueduct System does not serve public water needs in Central Maui. The Proposed Action contemplates the use of East Maui stream water to support the Mahi Pono farm plan in the Central Maui agricultural fields. As such, the public water system in Central Maui will not be affected by the Proposed Action. For clarification, we also note that the section you referenced, Section 3.4.20, is within Chapter 3, the chapter that addresses alternatives to the Proposed Action. Specifically, Section 3.4 provides a "Comparative Evaluation of Reasonable Alternatives."

Regarding your comment about the EMI Aqueduct System being privately owned, please refer to Response #3 above.

Comment 15: *The last paragraph on page 4 - 140 is very important. The paragraph is important because it points to a fairly widely held belief that the lease could be held by a public utility such as a Water Authority or by the Maui County Department of Water Supply. (See the Maui Board of Water Supply TIG report of October-2019.) The paragraph's last sentence makes a very important point by asking who should get the profits from the sale of water delivered to central Maui.*

Response 15: Regarding your comment about the last paragraph on page 4-140 of the Draft EIS, this paragraph reports on comments made at a focus group meetings held in Upcountry Maui in November 2018 in conjunction with the preparation of the Social Impact Assessment (SIA) (see Appendix G), where participants expressed their comments on and concerns related to the Proposed Action. However, it is important to note that this focus group was convened before Mahi Pono became the owner of the agricultural fields in Central Maui in December 2018. As discussed in the Draft EIS Section 4.7.2, follow up focus group meetings were held in April 2019:

In April 2019, Earthplan, contacted community leaders who helped convene the November 2018 focus group meetings and other community leaders who may provide insight not represented in the November 2018 focus group meetings, to gather input in light of the sale to Mahi Pono and Mahi Pono's stated intention to pursue diversified agriculture in Central Maui. .

The Draft EIS further reported that:

From November 2018 to April 2019, perceptions of the participants generally changed from being pessimistic to being optimistic with the change in land

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ownership from A&B to Mahi Pono. However, some concerns raised in the November 2018 focus group meetings still persist today. .

Hence, at the November 2018 meetings various communities expressed distrust with A&B, which was no longer farming sugar at that time. However, following the change in ownership to Mahi Pono, and Mahi Pono's plan for a diversified farming operation on the former sugar lands in Central Maui, this perception had changed. This has been added to the discussion in Section 4.7.2 as shown on page 4-259.

Moreover, Section 4.7.2 of the Draft EIS also explains that participants in the November 2018 focus group expressed concern about A&B not obtaining the Water Lease. Specifically, Section 4.7.2 of the Draft EIS states:

Participants doubted that the MDWS could adapt to changes if the EMI Aqueduct System were to curtail or discontinue providing water and services as is currently occurring. They said that the MDWS is already experiencing difficulty in maintaining the Upcountry Maui Water System now, and that any challenge would likely not be met. Residents were concerned that if domestic water was limited in any way, then the MDWS would need to pump water from wells. This would be more costly than receiving water from the EMI Aqueduct System and the MDWS would likely pass this cost to the water users. Likewise, well development would also cost money and water users would end up paying through water fees.

Regarding your comment about the TIG Report, we are aware of this report and received a copy through a public comment letter submitted on the Draft EIS. Specifically, the County of Maui Board of Water Supply (BWS), formed a Temporary Investigative Group (TIG) to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System. The TIG prepared a TIG Report that includes its own valuation of the EMI Aqueduct System, which was not based on an appraisal, and recommends that the County take immediate steps to secure ownership and control of the EMI Aqueduct System. The TIG Report was made public on October 16, 2019, after the publication of the Draft EIS. The Draft EIS included a discussion in Chapter 3 (the chapter dealing with alternatives to the Proposed Action) of alternative ownership of the EMI Aqueduct System at Section 3.1.2. In light of the TIG Report, Section 3.1.2 has been updated accordingly in the Final EIS as shown in pages 3-19 to 3-20. Acquisition of the EMI Aqueduct System by the County or any other public entity remains purely speculative at this time. The EMI Aqueduct System is not for sale or lease, and forced acquisition of the system is projected to be prohibitively expensive, resulting in substantial costs to the public. Moreover, should the County bid for the Water Lease, it would

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need to utilize the water in a fashion consistent with the analysis in this EIS (or complete the necessary environmental review for any use that is not considered in this EIS).

You comment about profit is unclear. However, the summary of the November 2018 SIA focus group meetings in the Draft EIS includes a sentence explaining that focus group participants at that time asserted that profits made by use of a public trust should be invested in public need. As stated in Response #13 above, whomever is awarded the Water Lease from the State will be required to pay lease rent to the State. OHA should receive 20 percent of the Water Lease rents while the DHHL should receive 30 percent of the water lease rents, which funds are deposited into the Native Hawaiian Rehabilitation Fund pursuant to Hawai'i State Constitution Article XII, Section 1, and is used to fund programs as prioritized in the Native Hawaiian Development Program Plan adopted by the Hawaiian Homes Commission.

It should also be noted that EMI is expected to employ a staff of 17 people with a payroll of \$0.8 million. Total direct and indirect jobs was 24, with an associated payroll of \$1.1 million. The direct and indirect jobs associated with EMI operations would support an estimated 54 residents.

Relatedly, as discussed in Section 4.7.3 of the EIS, it should be noted that the "profits" from the use of the East Maui water in Central Maui will, at full operations, support about 790 jobs (about 160 more than provided by sugar operations in 2006). The purchase of goods and services by farmers and ranchers and by the families of their employees would generate an estimated 350 jobs. In total, about 1,140 direct and indirect jobs would be supported, including about 1,000 jobs on Maui. Payroll is estimated at \$45.3 million for all direct and indirect jobs. The direct and indirect jobs would support an estimated 2,550 residents. Regarding fiscal impacts at full operations, diversified agricultural operations in Central Maui would generate an estimated \$4.5 million in State tax revenues by 2030. Property taxes paid by to the County of Maui would be about \$800,000 per year, and the City and County of Honolulu would derive about \$140,000 per year from the excise tax surcharge.

Comment 16: *The Executive Summary, page 3 – 17, mentions that the cost of water to the County is now \$0.06 MGD and that it could rise. This could have serious effects on the ability of the County to provide water for the UpCountry region. What is the range of the maximum potential rise and how will it be calculated/negotiated?*

Response 16: We are confused by your comment. The Executive Summary of the Draft EIS is found in pages iii - xiv. Page 3-17 is within Chapter 3, which is the alternatives analysis, and specifically within the discussion of impacts to economic and fiscal resources within Upcountry Maui under the various alternatives. The discussion of the anticipated economic and fiscal impacts within Upcountry Maui under the Proposed Action are found in Chapter 4, and

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specifically Section 4.7.3.1, which recognizes that the actual rate the MDWS will pay to EMI in 2030 for water delivery will be subject to a future agreement between the parties. We note, however, that the rate EMI has charged the MDWS has not changed since 1973, notwithstanding increases in the costs of owning and operating the EMI Aqueduct System.

There are many factors that could affect the cost of water delivered to the County of Maui. The cost of water to the County of Maui will depend, in large part, on the amount of the lease payment for the Water Lease and the costs of complying with the conditions of the Water Lease to be established by the BLNR. An appraisal to determine the fair market value of the Water Lease will be conducted prior to issuance of the Water Lease. Our expectation is that the DLNR, on behalf of the BLNR, will commission, or approve the commissioning of, the appraisal. The cost of water to the County of Maui also depends on the operational costs of running the EMI Aqueduct System, including all costs of complying with applicable regulations and laws and any conditions imposed on the Water Lease.

The Economic and Fiscal Impact Study (Appendix H) prepared for the Draft EIS estimated the water service fee to be paid by the MDWS would be \$0.10 per kgal. That is in contrast to the current MDWS rate paid to EMI of \$0.06 per kgal. This increase is based on EMI's per unit operating cost increasing because fixed costs to operate the EMI Aqueduct System will be spread out over a lower volume of water diverted. The Economic and Fiscal Impact Study estimated EMI operating costs under the Proposed Action to be \$0.068 per kgal, which is based on an assumed Water Lease payment to the BLNR based on the equivalent per unit cost under the 2019 revocable permits. Specifically, Section 4.7.3 of the Draft EIS states:

It is estimated that EMI's operating cost under the Proposed Action would be \$0.068 per kgal, which is higher than the current MDWS payment to EMI of \$0.06 per kgal. The actual rate the MDWS will pay to EMI in 2030 will be subject to a future agreement between the parties. However, for the purposes of the fiscal impacts analysis, the 2030 water service fee rate is estimated to be \$0.10, which has been calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, EMI would receive an estimated \$268,000 in 2030 from the MDWS.

The amount paid to the State Special Land Development Fund for the Water Lease would be based on an appraisal conducted prior to issuance of the Water Lease. Assuming the amount of the Water Lease is based on the equivalent per unit cost under the existing revocable permits, the annual payment to the Special Land Development Fund would be \$846,700. Of this, \$169,300 would be disbursed to OHA and \$254,000 would be set aside for the DHHL. GET revenue would be estimated at \$37,000 while payroll tax would be \$45,400 per year.

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However, please note that this discussion in Section 4.7.3 of the Final EIS has been updated to take into account the latest equivalent per unit cost under the latest revocable permits as shown in pages 4-277 and 4-283.

Comment 17: *Water prices are a matter is of considerable interest to the UpCountry farmers who now utilize this potable water to irrigate their farms. There seems to be no way to provide farmers with non-potable water. Consequently, any rise in the rates paid by the County water department could have significant impacts. Address them in the Final-EIS.*

Response 17: The range of potential impacts due to increased water delivery fees is addressed in the EIS. For clarification, as discussed in the EIS, water delivered through the EMI Aqueduct System does provide non-potable water to MDWS which is supplied to the Kula Agricultural Park (KAP). See EIS Section 2.1.3.2 (*"The MDWS also serves KAP with non-potable water from diversions of the same streams that serve the Kamole-Weir WTP through the Wailoa Ditch"*).

However, water sourced from the EMI Aqueduct System is also treated to potable quality by the MDWS for use in its Upcountry Maui Water System. Fiscal and economic impacts associated with the Proposed Action, including a discussion of potentially increased rates, are discussed in Section 4.7.3 and Section 4.7.4 of the Draft EIS. Impacts under the range of potential alternatives are also assessed in the EIS within Chapter 3 and economic, fiscal, agricultural economic impacts, specifically within Sections 3.4.12 and 3.4.13. For example, should no Water Lease be issued, it is projected that the MDWS would need to replace the water delivered by the EMI Aqueduct System with another water source, such as development of new wells. The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. The Draft EIS in Section 4.7.3.3.b cited a 2014 Brown and Caldwell report estimating a total life-cycle cost for 7.95 mgd of new wells as \$1.2 billion. The life-cycle cost is expressed as the net present value of all the costs incurred over 25 years, including capital, operating, and maintenance costs. This estimate was included in Appendix H (Economic and Fiscal Impact Study). It was a consideration in the discussion of the No Action alternative in Section 3.3 of the Draft EIS which stated that *"the development of alternative water-source infrastructure would be prohibitively expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment."*

Regarding your comment about any potential increase in MDWS water rates, we recognize that some Upcountry farmers get their water from the MDWS system. The potential for increasing MDWS rates is discussed in Response #16 above. There are many factors that could affect the cost of water sold to the County of Maui. The cost of water to the County of Maui will depend,

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in large part, on the amount of the lease payment for the Water Lease established by the BLNR. The cost of water to the County of Maui also depends on the operational costs of running the EMI Aqueduct System, including all costs of complying with applicable regulations and laws and any conditions imposed on the Water Lease.

Comment 18: *On page 3-18 at the end of the next-to-last paragraph, it states that the City of Honolulu would get a \$120,000 in tax revenues. Please explain why they, and not Maui County, would get the funds.*

Response 18: The General Excise Tax (GET) is a State tax that flows to the State General Fund. However, the State legislature authorized counties to adopt a surcharge on the GET up to 0.5 percent, and such funds will remain in the County where the GET is generated. As of this writing, the County of Maui has not adopted a GET surcharge. However, the City and County of Honolulu adopted a surcharge of 0.5 percent, effective from January 1, 2007 to December 31, 2030. Economic impacts that occur on Maui will generate indirect impacts elsewhere, including on the island of O‘ahu. At full farm operations in Central Maui, the farms and the families of their employees will purchase various goods and services, thereby generating indirect sales. Most of the indirect sales will be on Maui, but some will be on O‘ahu since Honolulu is the primary supply center in the State. These indirect sales will be subject to State excise tax. Because the County of Maui has not adopted a GET surcharge, the County of Maui does not collect an excise-tax surcharge.

For clarification, p. 3-18 of the Draft EIS does not recite that Honolulu would receive \$120,000 in tax revenues. Under the Proposed Action, at full operations of the Mahi Pono farm plan it is projected that the City and County of Honolulu would derive about \$140,000 per year from the excise tax surcharge.

Comment 19: *The leaseholder will have an obligation to deliver water to the DHHL lands. Since it will be expensive to build an adequate water line from East Maui’s aqueduct system to the Department of Hawaiian Homelands land in Keokea and Waiohuli, there should be a provision in the lease that will set aside funding over the years from the license fees to construct the necessary pipeline to transmit that water (over 10 MGD) across Kula. Please describe how that could work.*

Response 19: Specific information regarding the DHHL's future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

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The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown in pages 2-4 to 2-7. As explained in pages 2-4 to 2-7, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water, CWRM could act on a reservation request related to a proposed lease.

As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the DLNR's Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

Please note that there is no requirement of State water leases to deliver water to DHHL lands. The EMI Aqueduct System can collect and transport East Maui stream waters to its endpoint, at

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Kamole-Weir. However, as noted in Response #13, 30% of the revenues derived from all water leases issued by the State are deposited into the Native Hawaiian Rehabilitation Fund pursuant to Hawai'i State Constitution Article XII, Section 1, and is used to fund programs as prioritized in the Native Hawaiian Development Program Plan adopted by the HHC.

Comment 20: *A missing part of the large Draft Environmental Impact Statement is any consideration of Mahi Pono's (or any other successful bidder's) need to withdraw (cease operations) from using the East Maui water over the 30-year lease period. It could be for reasons that are financial, agricultural, labor problems, or something else such as a sale of the Mahi Pono owned lands to some entity not interested in farming.*

What would be the impact: a) on the East Maui watershed, b) the Maui County Department of Water Supply's commitment to the UpCountry water needs, c) the Hawaiian Homelands, and d) the agricultural lands now owned by Mahi Pono.

Response 20: The scenario you describe is vague and highly speculative, and is outside of the purpose and objectives of the Proposed Action. However, we note that Chapter 3 of the EIS and the underlying studies discuss alternatives to the Proposed Action, including the alternative of "No Action." The "No Action" scenario means one where no Water Lease is issued. Chapter 3 and the underlying studies assess the anticipated impacts in East Maui, Upcountry Maui, and Central Maui, under the no Water Lease scenario. The "No Action" scenario described in the EIS assumes that Mahi Pono would continue to farm the Central Maui agricultural fields to the extent feasible, whereas the scenario you posit entails a period of leasing of water and Central Maui farming, followed by an unidentified event that causes Mahi Pono to stop farming. However, it is expected that any Water Lease issued by the State will authorize the use of water for particular purposes. We further note that the Central Maui agricultural fields owned by Mahi Pono (and from which you anticipate their withdrawal), are designated by the State and County for agricultural uses (see Draft EIS, Section 5.1.3 State Land Use District and Section 5.5 Maui County Zoning) and the vast majority of those lands (some 22,000 acres) are designated as Important Agricultural Lands (IAL) by the State Land Use Commission (see EIS Section 5.1.4). Therefore, some manner of agricultural uses on those lands is anticipated no matter who owns the lands.

Regarding impacts to the East Maui watershed, the lessee under the Water Lease would remain subject to the terms of the Water Lease, including any requirements related to a watershed management plan. Regarding impacts to MDWS, as noted in Response #17 above, the existing water delivery agreements with the MDWS are contingent upon the issuance of the Water Lease. As for impacts to DHHL, we fail to see how any change in activities in the Central Maui agricultural fields would have any effect on DHHL's right to see a water reservation.

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Comment 21: *Various numbers are utilized throughout the document to explain the size of Mahi Pono's agricultural activities. There should be a clear table that explains the different land areas that are contained in the Mahi Pono purchase. For example, out of the 41,000 acres how much of it is "Important Agricultural Land"? How much is classified with a Land Productivity of A, B, C, D, or E? How much will be irrigated by water from East Maui's aqueduct system, versus water coming from Na Wai Eha or central Maui wells? How much land will actually be farmed?*

Response 21: Mahi Pono's total land holdings are not within the scope of the EIS. Please refer to Response #6 above which describes the scope of the EIS. Hence, as described in Response #14 above, the lands subject to assessment within this EIS owned by Mahi Pono are the approximate 30,000 acres of land termed the Central Maui agricultural fields throughout the EIS, as these are the Mahi Pono agricultural lands that can be served by water sourced from the proposed Water Lease.

Regarding your comment about how much of the Central Maui agricultural fields are designated as IAL, approximately 22,000 acres of the Central Maui agricultural lands are designated as IAL as discussed within Section 5.1.4 of the EIS (the Draft EIS projected approximately 23,000 acres in IAL and that has been revised in the Final EIS). The IAL lands are depicted in Figure 5-4 of the Draft EIS (revised to Figure 5-5 of the Final EIS).

Regarding your comment about how much of this acreage is classified within the respective land productivity classifications, as discussed in Section 5 of Appendix I and Section 4.7.4 of the Draft EIS, the overwhelming majority of the Central Maui agricultural fields (approximately 80%) are rated by the UH Land Study Bureau (LSB) as having the highest Overall Productivity Rating of "A" (on a scale of "A" to "E" with "E" being the lowest soil rating), and a little over 11% has a "B" rating. In other words, about 27,567 acres (90.9%) are high-quality lands rated A or B. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Classification System, developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), and the College of Tropical Agriculture, University of Hawai'i. Approximately 25,669 acres of the Central Maui agricultural fields are classified under the ALISH system as "Prime", which means "agricultural land which is land that is best suited for the production of crops because of its ability to sustain high yields with relatively little input and with the least damage to the environment."

Regarding your question about how much of this land is irrigated by the EMI Aqueduct System, all 30,000 acres of the Central Maui agricultural fields are irrigated by the EMI Aqueduct

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System. The Central Maui agricultural fields that are subject to assessment under this EIS are not irrigated by West Maui Ditch System. As discussed in Appendix I, water from the West Maui Ditch System is not used to irrigate fields east of Maui Veterans Highway - the Central Maui agricultural fields are all east of Maui Veterans Highway.

Regarding the use of well water, Draft EIS Section 2.1.4 (Central Maui Field System) explains:

In addition to the surface water imported from the EMI Aqueduct System to the Central Maui field irrigation system, the irrigation infrastructure includes fifteen brackish water wells that can supplement surface water to approximately 17,200 acres of the plantation at the lower elevations (CWRM D&O, FOF 738). These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739).

Draft EIS Figure 2-5 (Central Maui Infrastructure Map) identifies the wells in the Central Maui agricultural fields. However, please note that Section 2.1.4 has been revised in the Final EIS to more accurately describe the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono and clarifies that only 10 of the 15 wells are available for use by Mahi Pono, as shown in pages 2-24 to 2-25.

The reference to 15 brackish wells was derived from the CWRM D&O, FOF 738, as that was the number of brackish wells that A&B utilized during its sugar cane operations. However, one of the 15 wells referred to, State Well No. 5128-002, does not serve the Central Maui agricultural fields and four of the other brackish wells are on lands that are not owned by Mahi Pono. As such, Mahi Pono only has access to 10 brackish wells that can serve the Central Maui agricultural fields. Draft EIS Figure 2-5 has been revised, as shown on page 2-24 to more accurately depict the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields.

Regarding your comment about how much of the land will actually be farmed, the Mahi Pono farm plan projects that all of the approximate 30,000 acres of the Central Maui agricultural fields will be farmed as discussed in Section 2.1.4 of the EIS. Specifically, Section 2.1.4 of the Draft EIS states:

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Water Lease Limited to CWRM D&O Farm Plan

The Mahi Pono farm plan assumes the following:

- *The total surface water available for use after system losses is estimated to be approximately 65.88 mgd.*
- *Surface water can be supplemented by a brackish groundwater amount equal to 20 percent of surface water. Taking into account the CWRM D&O, it is estimated that there could be up to 16.47 mgd of brackish groundwater used in the Central Maui agricultural fields. (Plasch, 2019)*
- *Under the CWRM D&O, the total water available for use on the Central Maui agricultural fields after system losses is approximately 82.35 mgd*
- *That total amount of water will be delivered to approximately 30,000 acres.*
 - Of those 30,000 acres:*
 - *Approximately 15,950 acres would be used for farming, including 12,850 acres for orchard crops and 3,100 acres for other crops.*
 - *Approximately 13,800 acres would be used for pasture, of which about 4,700 acres would be irrigated.*
 - *Approximately 250 acres would be used for green energy, such as a solar farm.*

Because there is insufficient surface water to support the entire farm plan, brackish groundwater will also be used...

This farm plan would consist of the following:

- *Approximately 20,650 acres of irrigated farm land, including 12,850 of orchard crops, 600 acres of tropical fruit, 1,200 acres of row and annual crops, in addition to a community garden and limited non-GMO energy crops.*
- *Approximately 13,800 acres of cattle pasture, comprised of 4,700 acres of irrigated pasture, and 9,100 acres of unirrigated pasture. This should fit the proposed model of grass-finishing on irrigated pasture. The unirrigated acreage is less than 10,000 acres, which helps ensure that that the entire area devoted to unirrigated pasture will remain productive.*

However, please note that Table 2-1 in the Draft EIS (which provides the components of the farm plan and proposed water usage) has been slightly revised in the Final EIS (as Table 2-2) to address rounding errors as shown on page 2-29.

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Comment 22: *Groundwater from wells in Central Maui Is discussed. Clarify. Does the groundwater from Central Maui wells also include water on the west side of Mahi Pono's land traditionally irrigated primarily from the Na Wai Eha watershed?*

Response 22: The groundwater wells located west of Maui Veterans Highway are not included in the analysis. The Water Lease assessed in the EIS would provide water to the 30,000 acres of agricultural lands in Central Maui. Other farm areas that may be owned or operated by Mahi Pono are not relevant because the Water Lease would not provide any water to those areas. As defined in the EIS, Central Maui fields (about 30,000 acres) are east of Maui Veterans Highway. The fields west of the highway are not included in the analysis because they are serviced by a separate and distinct water system that includes surface water from the West Maui Ditch System and groundwater wells west of the highway. There is no connection between that water system and the EMI Aqueduct System or the groundwater wells east of the highway.

Comment 23: *On page 4 – 5, it states that 4.9 MGD of water is delivered from four UpCountry Wells (Ha'iku, Po'okela and the 2 Kapakalua Wells). These wells are an important back-up source for UpCountry. How do these wells decrease UpCountry's dependence on East Maui's aqueduct system water?*

Response 23: Page 4-5 of the Draft EIS is a figure showing the USGS Upcountry Topography Map; it does not contain the text you commented on. However, Draft EIS pages 4-61 and 4-63 (Section 4.2.2) includes a discussion of Upcountry Maui's groundwater sources accounting for 4.9 mgd:

Upcountry Maui is within the MDWS's Central Maui Aquifer Sector [fn1] which includes four aquifer systems: Pā'ia, Kahului, Kama'ole, and Makawao aquifers.... 10-20 percent of water delivered through the Upcountry Maui Water System comes from a series of basal aquifer wells: the Ha'ikū Well, Po'okela Well, and the two Kaupakalua wells. The rest comes from surfaced water sources. These four wells account for a total of 4.9 mgd of water delivered. In times of emergency, the Upcountry Maui Water System can draw up to 1.5 mgd from the Hāmākua Poko Wells (CWRM D&O, FOF 809). However, there is concern over this water due to the presence of pesticides from former pineapple production.

Footnote 1: Note that this aquifer sector is also the source for the irrigation wells serving the agricultural lands in Central Maui.

However, please note that the above has been revised based on additional consultation with the MDWS after publication of the Draft EIS (provided as Appendix P) as shown in pages 2-13 to 2-

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20, wherein MDWS clarified that it has only one Kaupakalua well (not two, as stated in the Draft EIS).

Moreover, please note that Section 2.1.3.1 of the EIS provided information regarding the Upcountry Maui Water System, which includes information regarding the wells that serve the Upcountry Maui Water System. Specifically, Section 2.1.3.1 of the Draft EIS notes 10-20% of the water delivered to the Upcountry Maui Water System is provided by wells. Information in the Draft EIS regarding the wells was taken from the CWRM D&O. However, following publication of the Draft EIS, we received additional information from the MDWS which resulted in edits to Section 2.1.3.1 as shown in pages 2-13 to 2-20. Specifically, as it relates to wells that serve the Upcountry Maui Water System, more detail was added to accurately describe the wells and their service areas. Hence, as described in Section 2.1.3.1 of the EIS and as shown in pages 2-13 to 2-20, although the Upcountry Maui Water System is supplied by water from wells, well water only accounts for a small percentage of the total water being delivered and is not adequate to meet the current total demands on the Upcountry Maui Water System.

Comment 24: *On page 4 – 153, it states that 7.1 million gallons per day of UpCountry Maui’s water comes from the East Maui irrigation aqueduct system. This is misleading since less than half of it is coming from the lease areas that are being analyzed in the EIS document. The rest is coming from other Mahi Pono lands, not the subject of this EIS. Correct this statement.*

Response 24: We respectfully disagree with your comment that this is misleading or that any correction is needed. Pursuant to the CWRM D&O, FOF 551, average daily use by MDWS from the Wailoa Ditch is 7.1 mgd which includes water delivered to the Kamole-Weir Water Treatment Plant (WTP) and the Kula Agricultural Park as discussed in Section 2.1.3.1 of the EIS. This is approximately more than half of the total surface water (13 mgd) delivered to Upcountry Maui. Specifically, Section 2.1.3.1 of the Draft EIS states:

The Upcountry Maui Water System relies on three surface water sources, which accounts for approximately 80-90 percent (13 mgd) of water delivered through the Upcountry Maui Water System (CWRM D&O, FOF 799). One of the three surface water sources is delivered directly by the EMI Aqueduct System, through the Wailoa Ditch. Average daily use by the MDWS from the Wailoa Ditch is about 7.1 mgd, which includes water processed by the Kamole-Weir Water Treatment Plant (WTP) (discussed in further detail below) and non-potable water for the KAP, which receives water from Reservoir 40.

As noted in Response #23 above, Section 2.1.3.1 has been revised in the Final EIS pursuant to additional information provided by MDWS (see pages 2-13 to 2-20), but the revisions do not

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alter the analysis regarding the extent to which the Upcountry Maui Water System relies on water from the EMI Aqueduct System. Moreover, it is appropriate to note that the other two surface water sources for MDWS to convey water to Upcountry Maui are situated on private land owned by EMI as discussed in Section 2.1.3.1, separate and apart from the License Area, thus are not waters covered by the Water Lease. In total, the delivery by the EMI Aqueduct System, and the two other sources situated on EMI land but not supplied directly through the proposed Water Lease, average 13 mgd or all of the total surface water delivered to MDWS.

Comment 25: *The last two paragraphs on page 4 - 140 are very important. The first of these paragraphs misleads when it says that the EMI Aqueduct System supports the two water treatment plants known as Olinda and Pi'iholo. That is not accurate. Both of these plants get water from lands now owned by Mahi Pono, but are NOT connected to the aqueducts coming from the East Maui lease areas.*

Response 25: As a starting point, we must clarify that p. 4-140 is within the section of the Draft EIS (Section 4.7.2) that reports on the findings of the SIA and the related focus group meetings conducted in preparation for the SIA. Section 4.7.2 of the EIS does not provide a description of the Upcountry Maui Water System. A description of the Upcountry Water System is provided in Section 2.1.3.1, which is titled Upcountry Maui Water System. That said, you are correct that the Olinda and Pi'iholo WTPs do not receive water conveyed by the EMI Aqueduct System or water from the proposed Water Lease, but rather from systems situated on private land owned by EMI as discussed in Response #24 above. Please note that the paragraphs you mention are based on statements made by participants in the November 2018 Focus Group Meetings conducted for the SIA. Hence, it appears that some of the participants are unaware of how the MDWS Upcountry Maui System operates. The purpose of Section 4.7.2 was to discuss the perceptions of the community in regards of the Proposed Action.

Comment 26: *Pages 4 - 148. There needs to be an explanation as to why the Maui Water Department needs so much more water after 2008 than in 2006. Going from 3.23 MGD to 7.1 MGD in such a short time frame. Does the 7.1 MGD count the water delivered from Pi'iholo and Olinda? Kula Ag Park?*

Response 26: The citation of the County of Maui's need for 7.1 mgd was based on the CWRM D&O, FOF 551, which stated that the EMI Aqueduct System typically delivers 7.1 mgd of water to the MDWS for use in Upcountry Maui. In 2006, the cited delivery amount of an average of 3.23 mgd was based on the MDWS annual reports. Potential reasons for the lower 2006 deliveries from the EMI Aqueduct System include lesser demand in Upcountry Maui, or more yield from groundwater sources or the Waiokamoi system. The 7.1 mgd figure does not include

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Piiholo and Olinda; the figure does include water delivered to the KAP.

Comment 27: *Sugar plantation workers were unionized, had very high level of technical skills, maintaining machinery, driving huge trucks, etc. and were **highly paid**. What will Mahi Pono do to recruit workers who can afford to live on Maui? What are the proposed salary rates? Moreover, if **workers are paid adequate living wages**, will those salary rates allow the leaseholder to have profitable agricultural operations? Discuss the labor situation at length.*

Response 27: Regarding your comment about what Mahi Pono will do to recruit workers, based on past hiring, nearly all future employees are expected to come from the island of Maui. Moreover, Mahi Pono will pay wages and provides benefits sufficient to attract and retain workers, which will require wages sufficient for workers to afford housing on Maui. In its first 18 months of existence Mahi Pono had hired over 200 workers, all of whom were living on Maui when hired as discussed in Response #10 above. They were attracted by the type of work, wages and benefits.

As discussed below in Response #29, Mahi Pono will pay wages and provide benefits sufficient to attract and retain workers. Under the circumstances, these wages should be sufficient for workers to obtain housing.

Regarding your comment about whether or not the living wages provided to Mahi Pono employees would allow for profitable agricultural operations, this is discussed in detail in Section 4.7.4 of the EIS which includes labor and payroll expenses. Specifically, Section 4.7.4 of the Draft EIS describes economic impacts during the estimated 10-year development period of the Mahi Pono farm plan, and the impacts once the farm plan is fully implemented.

During the development period: an average of 210 workers would be needed over the assumed 10-year development period to convert former sugarcane fields to fields for diversified crops and pasture, construct agricultural buildings, and install one or more solar farms. Jobs would include equipment operators, soil specialists, irrigation specialists, planters, truck drivers, construction workers, supervisors, etc. Also, the various jobs would range over a variety of skill levels, including entry-level, semi-skilled, skilled, management, and professional positions. Most of these temporary jobs are expected to be filled by residents of Maui and other the islands. In addition to the direct jobs, about 120 indirect jobs would be generated by purchases of goods and services. Indirect jobs will include those at companies supplying farming equipment, irrigation systems, fencing, chemicals, building materials, repair services, etc. Other indirect jobs would include those involved with supplying goods and services to families, and would range over a variety of skill levels.

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Thus, direct-plus-indirect employment during the development period would average about 330 jobs, of which about 290 jobs would be on Maui. Actual employment would vary over time. The payroll during development would average about \$8.8 million for the direct jobs and \$14.5 million for all direct and indirect jobs. During the development period, the direct and indirect jobs would support an estimated 730 residents living in about 310 homes, of which about 640 residents and 280 homes would be on Maui.

Once the farm plan is fully operational, as explained in Section 4.7.4:

At full development, farm employment is expected to reach about 790 jobs (about 160 more jobs than provided by sugar operations in 2006). The jobs would be typical of those provided by diversified-crop farming and ranching; e.g., managing soils and pests, operating and maintaining irrigation systems, planting crops, pruning trees, harvesting crops, sorting and washing crops, packing crops, trucking crops to markets and shipping terminals, moving cattle among pastures, maintaining fences, marketing, accounting, etc. The increase in employment would be gradual, with most jobs filled by former sugarcane workers, skilled workers from Maui and other islands, recent graduates of agricultural programs at Hawai'i high-schools and colleges, and unskilled workers who would receive on-the-job training.

The purchase of goods and services by farmers and ranchers, and by the families of their employees, would generate an estimated 350 indirect jobs. Indirect jobs would include those at companies providing agricultural supplies and equipment, office supplies and equipment, repair services, trucking services, veterinarian services, etc. Other indirect jobs would include those involved with supplying goods and services to employees and their families. Thus, direct-plus-indirect employment would totaled about 1,140 jobs, with about 1,000 jobs on Maui. Both the direct and indirect jobs would range over a variety of skill levels, including entry-level, semi-skilled, skilled, and management positions. The payroll would be about \$28.5 million for the direct jobs and \$45.3 million for all direct and indirect jobs. The direct and indirect jobs would support an estimated 2,550 residents living in about 1,100 homes, with about 2,290 residents and 1,010 homes on Maui.

Comment 28: Page 4 – 169. There is an estimate that there will be **more workers** needed than was the case with sugarcane, and that in addition to the employees there will be indirect employment (those servicing the Mahi Pono employees).

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790 farm jobs plus 350 additional indirect jobs → 1,140 workers. At least 2,550 family members.

*There needs to be robust discussion/analysis about how Mahi Pono will get workers given the Maui's existing very **low unemployment rate**. How many workers will need to be imported?*

Response 28: At full operations of the Mahi Pono farm plan, currently estimated to occur around 2030, an estimated 790 farming and crop-processing jobs will be provided in Central Maui (direct jobs) (about 160 more jobs than provided by HC&S sugar operations in 2006). As explained in Section 4.7.4.d:

The increase in employment would be gradual, with most jobs filled by former sugarcane workers, skilled workers from Maui and other islands, recent graduates of agricultural-schools and colleges, and unskilled workers who would receive on-the-job training.

Moreover, as noted in Appendix I of the EIS, approximately an additional 228 indirect jobs on Maui and will be generated by the purchase of goods and services, for a total of approximately 1,018 new jobs on Maui. Hiring workers will be spread out over a number of years as fields are planted, orchards mature, processing facilities are built, etc. Assuming 10 years to reach full operations, direct employment on Maui will increase by an average of about 80 jobs per year, while total direct and indirect jobs will increase by an average of about 100 jobs per year. The latter figure is less than 8% of the 1,270 annual job increase projected for the years 2020 to 2030 by the State for the County of Maui (DBEDT, "Population and Economic Projections for the State of Hawai'i to 2045", June 2018).

Moreover, as discussed in Response #27 and #10 above, based on past hiring, nearly all future employees are expected to come from Maui. While Maui has had a low unemployment rate in the past, attracting workers should be easier than in the recent past because of the long-term adverse economic effects of COVID-19 on tourism and Maui's economy. It may take years to rebuild the economy, and the Mahi Pono farm plan will contribute significantly to this rebuilding.

Comment 29: *A very important consideration that has been left out entirely is **housing** for all of the new imported employees and their families. Not only will workers find it difficult to find a house, but they also will add to the pressure on the existing labor force who are seeking affordable housing.*

Response 29: Since most farm workers are expected to come from Maui, few homes will be required for workers new to the island. See Responses #10, 27 and 28 above. In any case, Mahi

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Pono will pay wages and provide benefits sufficient to attract and retain workers. Under the circumstances, these wages should be sufficient for workers to obtain housing.

Comment 30: *4 – 144, plus 4 - 145 refer to labor problems and housing issues. This should be a valuable and important part of the environmental impact statement. Unfortunately, there is no indication of how these issues will be handled (mitigated) in the future. There is a now shortage of workers on Maui and there is a very significant shortage of affordable housing for these employees. These very important impacts have NOT been mitigated, nor even addressed.*

Response 30: Please note that the discussions presented on Draft EIS pages 4-144 and 4-145 are concerns / perspectives offered by participants in conjunction with the SIA and are not consistent with the economic and fiscal projections that are within the EIS. Participants in the SIA focus groups appreciated that many new agricultural jobs would result from the Mahi Pono farm plan, but expressed concerns about potential difficulty in filling the new jobs due to Maui's then-low unemployment rate, and expressed concerns about high labor costs, unionization and housing costs. Please see Responses # 10, 27, and 28 for our responses to employment and housing concerns. The appropriate technical reports that address these topics are the Economic and Fiscal Impact Study (Appendix H), and the East Maui Water Lease: Agricultural and Related Economic Impacts (Appendix I).

Comment 31: *Reviewers of the Final-EIS will need to know **who might be consuming the water** being delivered from East Maui. For example, the Maui Water Department, Mahi Pono for the use on its agricultural fields, the Kula agricultural Park and its future extension, Hawaiian Homelands (both UpCountry in Keokea and in Central Maui at Pulehunui), Nahiku residents. **Anyone else?** Only then can we know the impacts that these waters would have.*

Response 31: Regarding your comment about who might be consuming the water being delivered from East Maui, please note that as discussed throughout the EIS and specifically in Section 2.1 of the Draft EIS, the water will be delivered to MDWS for use in Upcountry Maui and at KAP including the future 262-acre expansion, as well as the Central Maui agricultural fields. The impacts of these uses are discussed throughout Chapter 4 of the EIS. Section 4.16 of the Final EIS also identifies the historic uses of limited amounts of water expected through an interim period. See page 4.331 of the Final EIS. Such uses are also discussed as part of Mahi Pono's current water usage in Final EIS Section 2.1.4. The Proposed Action will also ensure the continued water delivery to the Nāhiku community served by MDWS, as the agreement to provide water to MDWS is contingent upon the issuance of the Water Lease. Furthermore, in Section 2.1.1 of the Draft EIS states that the Water Lease is also subject to the DHHL rights to reserve water sufficient to support current and future homestead needs. Specific information regarding the DHHL's future water reservation, including the anticipated amount of the DHHL

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reservation, was discussed in Section 2.1.1 of the Draft EIS, as updated in the Final EIS. Please see Response #19 above.

Comment 32: *Provide a detailed listing of those entities that would have access to the water and what they will be paying for that water. At what rates per 1,000 gallons will water be sold to each? The same rate for each purchaser?*

Response 32: Regarding your comment about the list of entities that would have access to the water, this includes those discussed in Response #31 above. However, the Mahi Pono farm plan does contemplate that approximately 800 of the 30,000 acres be leased out as a “community farm.” At this time, however, it is not known who these community farm entities will be.

Regarding your comment about the cost of water, there are many factors which could affect the cost of water delivery as discussed in Response #16 above. Water delivery costs will depend, in large part, on the amount of the lease payment for the Water Lease to be established by the BLNR, as well as the operational costs of running the EMI Aqueduct System, including all costs of complying with applicable regulations and laws, and any conditions imposed on the Water Lease.

Comment 33: *Be very specific as to whether there are any other potential users of the water. For example. A&B for use on its agricultural properties? Or A&B for use on **any non-agricultural development project**? Any other entity that might utilize the water for future non-agricultural developments?*

Response 33: As discussed in Response #31 above, the end users of the water from the Water Lease are identified in the EIS. In addition to the irrigation water needs, the Mahi Pono farm plan includes agricultural buildings to support its agricultural operations such as washing and packing areas, storage, and related uses accessory to agriculture. In addition to these agriculturally related developments, and the potential solar farm(s), for an interim period the EMI Aqueduct System is currently providing approximately 1.1 mgd of water to several entities located in proximity to the Central Maui agricultural fields that have historically received water dating back to HC&S’ sugar operations, information about which has been added to Section 4.16 and Section 2.1.4 of the Final EIS as shown page 2-30 and page 4-331. At full operations of the Mahi Pono farm plan, the water diverted under the proposed Water Lease will not be used to for any of the remaining A&B properties that were not sold to Mahi Pono, unless received through the MDWS, like other MDWS customers.

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Comment 34: *To determine all the potential environmental impacts and if Mahi Pono gets the East Maui lease at auction, is A&B expecting to receive any water? If yes, will the water be used for any non-agricultural development?*

Response 34: As discussed in Response #31 and Response #33 above, other than for the historic uses and only for an interim period, A&B will not receive any water from the proposed Water Lease, unless received through the MDWS, like any other MDWS customer. Mahi Pono is committed to using water from the proposed Water Lease for the purpose of supporting the development of the Mahi Pono farm plan which is discussed in detail in Section 2.1.4 of the EIS.

Comment 35: *Describe the impacts and implications if Mahi Pono decide that it no longer wants or needs the water for agricultural uses. Could it be used for other purposes?*

Response 35: This is not within the scope of the EIS. The EIS addresses the anticipated impacts of the Proposed Action, i.e., the proposed Water Lease. Please refer to Response #6 above regarding the scope of the EIS. However, it is expected that the Water Lease, if issued, will be issued conditioned upon identified and approved uses of the water, and the lessee would have to comply with those requirements in order to retain its rights under the Water Lease. Moreover, it is assumed that Mahi Pono will not “decide that it no longer wants or needs the water for agricultural uses” due to the substantial investments that it has made.

Comment 36: *Would the aqueduct system continue to be maintained which may be necessary for both the Maui County Department of Water supply and for the Hawaiian homelands?*

Response 36: As described in the EIS as a part of the Proposed Action, as well as the associated alternatives discussed in Chapter 3 including the No Action (aka no Water Lease) alternative, the EMI Aqueduct System would be continued to be maintained. As discussed in Section 2.1.2 of the Final EIS, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment.

Please note, however, that under the No Action alternative (described in Section 3.3 EIS and further assessed through Section 3.4 of the EIS), in which no Water Lease is issued to the Applicant, there would be no reservation of water for DHHL and no obligation to provide water to the County.

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For clarification, as discussed above in Response # 19, there would be no obligation on the Applicant to deliver water to DHHL and the water reservation applies only in the case that the Water Lease is issued. Chapter 3 of the Draft EIS also anticipates that under the No Action alternative, water delivery via the EMI Aqueduct System to MDWS would cease (see Section 3.4.20) as would water service for the Nāhiku community (see Section 3.4.20).

Comment 37: *The paragraph at the top of page 4 - 58 makes it clear that CWRM considered it important to **allow water to be utilized on the IAL lands in Central Maui**. It did not make any provision for the use of water for any other Central Maui lands. The Final-EIS should differentiate between the IAL lands, and other Mahi Pono lands and water needs/uses in Central Maui.*

Response 37: We acknowledge the CWRM's comment about water for IAL lands in Central Maui. However, the CWRM D&O acknowledged that it is reasonable and beneficial to use a portion of East Maui stream water for the development of diversified agriculture on Maui's central plains. The CWRM quotation on page 4-58 of the Draft EIS provides in full:

Yet, we believe it to be reasonable and beneficial to use a portion of East Maui stream water for the development of diversified agriculture on Maui's central plains. Diversified agriculture has and should continue to provide economic benefits and can now make a larger contribution to Hawai'i's food sustainability. We are also concerned that leaving these lands in an un-cultivated state will increase wind-blown erosion that will damage Maui's near shore marine environment, air quality, and tourism competitiveness. The Commission's intent in this decision is to ensure that a sufficient amount of offstream water is available to support the cultivation of diversified agricultural crops on the lands designated as IAL in Central Maui.

And see CWRM D&O, Executive Summary, p. vi.

CWRM did not say or in fact limit the use of water to only IAL. Farmland that is not designated IAL will stay in agriculture, consistent with its State and County zoning designations (see Figure 5-2 of the Draft EIS). Also, the various crops will be grown on fields that are determined to be optimal for overall farm operations, regardless of the IAL designation. Since water will not be available to irrigate all of the farmland, some of the fields will be used for unirrigated pastures, as depicted in Figure 2-6 of the Draft EIS. Current IAL lands in Central Maui are presented in Figure 5-4 of the Draft EIS as discussed in Response #21 above.

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Comment 38: *In the Executive Summary, near the top of page 2 – 4, it indicates that the DHHL staff has identified a need in the future for over 11 million GPD. What effect will DHHL's needs (which by law must be satisfied) have on the Central Maui agricultural operations and on Mahi Pono's profitability?*

Describe the specific impact that would take place when DHHL indicates that they wish to have the required 11 million gallons of water per day for their use in Keokea and Pulehunui. What will be the effect at that time on the agricultural operations of Mahi Pono?

Response 38: Your citation to the Executive Summary is unclear because you point to page 2-4, which is not part of the EIS Executive Summary. Page 2-4 is within Draft EIS Section 2.1.1, which is the section that discusses the DHHL water reservation. As discussed in Response #19 above, DHHL's rights to a water reservation were discussed in Section 2.1.1 of the EIS, along with the anticipated amount of the DHHL reservation, as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the HHC actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown in pages 2-4 to 2-7.

As noted in the Draft EIS Executive Summary, the Proposed Action seeks to divert the maximum allowed under the CWRM D&O and will comply with the IIFS set by the CWRM D&O ("The maximum amount of water that can be awarded through the Water Lease is what is available for diversion after implementation of the CWRM D&O."). The same section of the Executive Summary acknowledges that "The Water Lease is also subject to the rights of the

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DHHL to reserve water sufficient to support current and future homestead needs as provided by Section 221 of the Hawaiian Homes Commission Act."

Consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture. Based on the multipliers used to conduct the analysis for the Agricultural and Related Economic Impacts report appended as Appendix I of the EIS, the estimated changes to the Mahi Pono farm plan that would result from an 11 mgd reduction in the supply of surface water would be as follows:

- Land Use, Central Maui
 - Crops: decreased by 1,906 acres (11 mgd × 173.31 acres/mgd)
 - Irrigated pasture: decreased by 161 acres (11 mgd × 14.62 acres/mgd)
 - Unirrigated pasture: increased by 2,067 acres (11 mgd × 187.93 acres/mgd)
- Sales (Mahi Pono and tenants): decreased by \$18.4 million per year (11 mgd × \$1.673 million/mgd)
- Employment (Mahi Pono and tenants): decreased by 93 jobs (11 mgd × 8.447 jobs/mgd)
- Payroll (Mahi Pono and tenants): decreased by \$3.33 million per year (11 mgd × \$0.303 million/mgd)

The above has been added to Section 2.1.4 as Footnote 6, to Section 4.7.3 as Footnote 16, and to Section 4.7.4 as Footnote 17 as shown on page 4-287 and 4-304.

Hence, operating profits of Mahi Pono and its tenants would decrease by an estimated \$1.8 million per year (10% of sales) and agricultural operations would be impacted as described above based on an 11 mgd reduction of available water.

Comment 39: *The discussion at the bottom of page 3 - 19 is intended to significantly scare UpCountry farmers. Since the majority of the water used in the UpCountry area does not come from the East Maui lease areas, the threat is not as dire as stated in the Draft. Please correct.*

Response 39: The discussion at the bottom of page 3-19 of the Draft is intended to disclose the impact of the No Action alternative on Upcountry Maui, and the EIS includes an analysis of the various impacts that the termination of water service to MDWS could entail. No corrections are needed. As discussed in Response #24 above, the EIS assumes under the Proposed Action that

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approximately an average of 7.1 mgd is conveyed to MDWS at Kamole-Weir WTP from the EMI Aqueduct System via the Wailoa Ditch as discussed in Section 2.1.3.1 of the EIS. This is approximately more than half ($\approx 54\%$) of the total surface water (13 mgd) delivered to the Upcountry Maui Water System. The 13 mgd accounts for approximately 80-90% of total water delivered to the entire Upcountry Maui Water System (CWRM D&O, FOF 799).

Regarding your comment about the discussion at the bottom of page 3-19, this is in reference to the No Action alternative impacts to Upcountry farming activities, including the KAP. Specifically, Section 3.4.13 of the Draft EIS at page 3-19 states:

Under the No Action alternative, farming activity in Upcountry Maui is expected to be near zero (reduced from approximately 1,520 acres and about 15.1 million pounds of crops per year under the Proposed Action). Without water through the EMI Aqueduct System, the County would have to develop new water sources, which is expected to take several years. In the interim, it is expected that farming in Upcountry would end, and even once new water sources are developed to supply Upcountry Maui, it is not expected that significant farming would return to the area because better farming conditions exist in Central Maui. A significant drop in sales is estimated, from \$31.8 million/year direct and indirect sales under the Proposed Action to about zero under the No Action alternative.

The reason the analysis comes to this conclusion is because the agreements MDWS has with EMI are contingent upon issuance of the Water Lease (or other suitable approvals for water use, such as revocable permits). Hence, under the No Action alternative, MDWS would no longer receive water from the EMI Aqueduct System, and no longer be entitled to diverted water from EMI's land (the Upper and Lower Waikamoi Flumes) to supply Upcountry Maui for its domestic and agricultural water demands as discussed in Section 3.3 of the EIS. Specifically, Section 3.3 of the Final EIS states in relevant part (revised from the Draft EIS to take into account that the Nāhiku community is not served by the EMI Aqueduct System):

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate for Upcountry Maui and Nāhiku. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS.

Comment 40: *At present, about 17,000 acres of EMI lands are owned 50/50 by Mahi Pono and A&B. How long will this last? What will happen after Mahi Pono becomes a 100% owner and*

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*how would that affect the water lease? Will A&B, (now a Real Estate Investment Trust (REIT), retain **any rights to the water**? Will A&B receive any discounted rates for the use of that water? Will they be able to use the water for non-agricultural purposes?*

Response 40: Regarding your comments above, please note that those issues are not within the scope of the EIS as previously explained in Response #6 above. The scope of the EIS is to assess the impacts of the proposed Water Lease. Regarding your comment about A&B retaining rights to water or receiving water at discounted rates, please note that A&B has no such rights, and will not receive any water diverted from the EMI Aqueduct System for any of its properties as discussed in Response #33 above, unless provided through the MDWS, like any other MDWS customer.

Comment 41: *It seems that the estimate for the **future payments by Mahi Pono** to the Department of Land and Natural Resources for the water is **absurdly low**. On page 4 - 150, they are estimating the cost to be \$0.10 per thousand gallons, giving the State an annual revenue of **only** about \$268,000 in 2030.*

This figure might make agricultural production very profitable, but it would deny DHHL the funds needed to bring water to the Hawaiian Homelands areas. That would be a serious negative impact, but would make Mahi Pono's investor very profitable.

Response 41: It seems you misunderstood the discussion on page 4-150 of the Draft EIS. The EIS does not state that the State would receive annual revenue of \$268,000 in 2030. The numbers you refer to in your Comment #41 above are in reference to the revenue that EMI would generate based on the amount that MDWS would pay to EMI for the water delivery under the assumptions discussed in the Draft EIS. Specifically, Section 4.7.3.1. of the Draft EIS states in relevant part:

It is estimated that EMI's operating cost under the Proposed Action would be \$0.068 per kgal, which is higher than the current MDWS payment to EMI of \$0.06 per kgal. The actual rate the MDWS will pay to EMI in 2030 will be subject to a future agreement between the parties. However, for the purposes of the fiscal impacts analysis, the 2030 water service fee rate is estimated to be \$0.10, which has been calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, EMI would receive an estimated \$268,000 in 2030 from the MDWS.

Hence under the Proposed Action, as described in the Draft EIS, EMI is expected to generate approximately \$268,000 in the year 2030 from MDWS payments for the delivery of water by EMI. However, please note that the above has been revised to take into account the charges for

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the most recent revocable permits for 2021, as approved by the BLNR in November 2020 as shown in pages 4-277 and 4-283.

Assuming your comment relates to the amount of revenue to be earned by DHHL from the proposed Water Lease, the amount estimated to be disbursed to DHHL from the Water Lease rental payments is approximately \$128,100 annually.

However, those numbers are educated projections because the actual Water Lease rental payments are as yet unknown (but for the purposes of the Final EIS are projected, based upon the fees for the 2021 revocable permits, as \$427,000). As discussed above in Response #13, the amount that the State (and therefore DHHL and OHA) will receive as Water Lease rental payments will ultimately be determined by appraisal.

Comment 42: *On page 4-150 and PDF pages 1777 + 1780. It is unclear how the number \$846,700 was calculated or obtained. What is the referenced “Special Land Development Fund”? How is it different from the annual cost for the water lease?*

Response 42: The \$846,700 figure was estimated based EMI’s past State Special Land Development Fund payments for the revocable permits. This number was adjusted for 2030 dollars. The State Special Land Development Fund is administered by the DLNR where all land rents the State receives for land that is either leased or used under a revocable permit. Hence, the annual cost of the Water Lease would be distributed to this fund, along with all the other leases or revocable permits in the State. However, please note that this figure has been adjusted to take into account the charges for the most recent revocable permits for 2021, as approved by the BLNR in November 2020 as shown in pages 4-277 and 4-283.

Comment 43: *On page 4 – 153, it is stated that there are 830 businesses in UpCountry Maui, generating an annual payroll of \$232 million. This seems very, very high. Consequently, an accurate source should be provided for these numbers, not just “Gale Cengage Learning”.*

Response 43: Gale Cengage Learning is a publicly available data source available through the Hawai‘i State Public Library System. It provides business data in selected geographic locations utilizing comprehensive and reliable datasets, including Simmons National Consumer Study, American Community Survey, Experian Mosaic consumer lifestyle segmentation data. Gale Cengage Learning’s “Business Summary Report” provides a listing of individual business names, locations, and other information, which was aggregated for the Upcountry Maui area. This source is a noted reference in the Economic and Fiscal Impact Study provided as Appendix H to the EIS. To provide context for the 830 businesses in Upcountry Maui reported by Gale

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Cengage Learning, it is noted that the 2018 Maui County Databook reported that there were 4,618 businesses in Maui County with annual payroll of \$2.5 billion in 2016.

Comment 44: *On page 1793, 2nd paragraph, last word should be **b**illion, not **m**illion.*

Response 44: You are correct. The household income in the Upcountry Water System area had a collective income of approximately \$1.0 billion in 2010. The correct information has been included in the Final EIS.

Comment 45: *The executive summary states in the second paragraph that no construction activity will be required. It seems that this is incorrect since there will be considerable construction activity to reconfigure many of the diversions, to close down a number of the diversions and to repair the ditch system where it leaks, and to restore reservoirs and irrigation systems. **Construction has impacts; what are they? How will they be mitigated?***

Response 45: We respectfully disagree with your comment. Issuance of the proposed Water Lease does not entail any construction activity in the East Maui License Area. The Water Lease would continue to use the existing EMI Aqueduct System. Routine maintenance and repair activities specific to the Proposed Action include the continuation of the regular maintenance of the system, as has been the case for decades. Please note, the EMI Aqueduct System does not "leak" as you stated in your comment. Modifications to diversions required under the CWRM D&O will be undertaken irrespective of the proposed Water Lease.

Comment 46: *Because water has high value, indicate the potential for building **new reservoirs, water tanks and lining the existing reservoirs** throughout Central Maui. These one-time costs may provide considerable benefits and reduce negative impacts over the length of the lease and even thereafter.*

Response 46: The options you mention above are discussed in Chapter 3 of the EIS. Specifically, Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that had been raised in scoping, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same

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degree as (a) through (d). However, based on comments received on the Draft EIS, the alternate/supplemental water analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS.

Specifically, Section 3.1.1.3 discusses the added storage alternative. However, adding more reservoirs or water tanks to supplement the existing and available water sources is considered prohibitively expensive which could limit the Mahi Pono farm plan and cause water costs to increase. Moreover, depending upon varying factors, there may be adverse environmental impacts associated with developing additional water sources as shown in pages 3-11 to 3-14.

Regarding your comment about lining the existing reservoirs in Central Maui, this would reduce the amount of recharge that occurs in the Central Maui aquifers from the use of diverted East Maui water for irrigation purposes on the Central Maui fields. Improving existing reservoirs in the Central Maui fields would lessen the amount of water that seeps into the ground at these reservoirs. However, that water is not necessarily lost. It can be stated that seepage at the reservoirs is not deemed as a waste of water due to its contribution to recharging the aquifer. The seepage occurring at the reservoirs helps to recharge the Central Maui Aquifer through infiltration. This seepage allowed HC&S to sustain pumping of the aquifers significantly greater than the SY for the aquifer set by CWRM. Due to the lessened amount of diverted water available to Mahi Pono as compared to the previous amounts of water that HC&S was using, the recharge to the Central Maui Aquifer will be substantially lessened.

Thus, under the Proposed Action, it is assumed that at full operation of the Mahi Pono farm plan that system losses in the Central Maui Field Irrigation System (i.e., water lost to seepage and evaporation, and including other water uses, such as water used for reservoirs, fire protection, dust control, and hydroelectric uses) would add to the recharge amount that occurs in Central Maui, as discussed in Section 4.2.2 of the EIS.

Thus, lining the reservoirs would reduce the ability to use groundwater wells to supplement the surface water diverted from East Maui. In other words, lining the Central Maui reservoirs would increase the need and dependence on the water diverted from East Maui.

Comment 47: *It is mentioned several times that the food supply will be for **local** consumption. However, nowhere is it defined **what local means**. Does it mean Maui Island? Maui County? Or the State of Hawaii? Or something else?*

Response 47: Food for local consumption means crops grown for Hawai'i residents and visitors. Section 4.7.4 of the Final EIS has been revised accordingly to clarify, as shown on page 4-285

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Comment 48: *The EIS states that there will be 250 acres utilized for a utility-scale solar PV operation. The Solar PV developer AES has stated publicly that there will be about 500 acres needed for that project. Please explain the difference.*

Response 48: As described in Section 2.1.4 of the Draft EIS (page 2-18), the Mahi Pono farm plan contemplates approximately 250 acres within the Central Maui agricultural fields being used for renewable energy, potentially for the development of solar farms. However, the AES solar farm you referred to is not within the Central Maui agricultural fields and is not part of the Mahi Pono farm plan described in the EIS. The AES solar project you are referring to is proposed for fields located in West Maui and is outside of the scope of this EIS.

Comment 49: *There is a recommendation to form a Core Working Group made up of residents and communities that will be affected by this lease. The Final-EIS should make provision for how this group will be formed and how the leaseholder will utilize its input. Will their recommendations be merely studied or actually implemented? Will the leaseholder commit to financially helping to facilitate the Core Working Group's activities?*

Response 49: The SIA, as well as Section 4.7.2 of the EIS, recommends that there be community outreach by the Applicant in connection with issuance of the Water Lease. However, terms of the Water Lease are at the discretion of the BLNR. Should the BLNR make this a requirement of the Water Lease, the Applicant will comply with all conditions of the Water Lease.

Comment 50: *Executive Summary, page x. Will the leaseholder assist getting the Core Working Group into action as well as helping the Keanae and Wailua communities to move past historical impacts?*

Response 50: Please refer to Response #49 above. Should the BLNR make this a requirement of the Water Lease, the Applicant will comply with all conditions of the Water Lease.

Comment 51: *On the third line of the Executive Summary page xiii, the use of the word "commercial" raises a number of questions that are not examined elsewhere. Why is it being used here? What are the implications?*

Response 51: Commercial uses would be those related to the MDWS system in Upcountry Maui as EMI conveys water to MDWS to supply its Upcountry Maui Water System. This is examined specifically in Section 4.7.3 of the EIS as it relates to economic and fiscal impacts. As mentioned in Response #43 above there are an estimated 830 businesses in Upcountry Maui.

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Comment 52: *There are several references at the end of chapter 3 to the fact that the federal government's regulations allowing **herbicides and pesticides** means that there will be no environmental impacts. This is false since the federal government has permitted the use of toxic herbicides that have been shown (in several court cases) to cause severe health problems and the death of individuals.*

I am an example of that problem. Having used Monsanto's herbicide Roundup, I was diagnosed with stage 4 Non-Hodgkin's lymphoma, and I (and 40,000 other people) am now a plaintiff in a lawsuit against Monsanto for damages. The federal government's blessing and herbicide approval does not eliminate negative impacts that must be evaluated in the Final-EIS.

*There needs to be a strong statement in the Final-EIS that makes it very clear that Monsanto's **herbicide Roundup** or its generic versions will NEVER be used in the East Maui watershed. This overused chemical has been proven to be a cause of cancer. I am a personal victim.*

Response 52: We acknowledge your comments regarding the use of Round-Up. Pesticide use is regulated by both State and Federal law. In January of 2020 EMI committed to foregoing using Round-Up to maintain the EMI Aqueduct System and any trails and access roads. Mahi Pono's use of these chemicals is compliant with all laws regulating pesticide use, and certified commercial applicators are utilized as required. Act 45 which was passed by the 2018 Hawai'i Legislature and effective on January 1, 2019 required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. This report as well as any other report required by law is publicly available from the respective government entity. The State of Hawai'i DOA's Pesticide Branch also provides regulatory oversight over Mahi Pono's pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. It is also noted that since January 2020 Mahi Pono committed to discontinuing use of Round-Up. This information has been included in the Final EIS as shown in pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations.

Comment 53: *Section 3.4.19 **Traffic**. There is a ridiculous assertion that there will be no traffic impact. However, the Draft-EIS also makes the claim that there will be an additional 2,550 individuals, if the lease is issued. How can it then assert that there will be no traffic impact? There certainly will be, and it needs to be discussed because Maui's roads are already crowded.*

Response 53: Please note that the Proposed Action is not anticipated to result in a population increase. As explained in Response #10 above, it is assumed the majority of the Mahi Pono employees will be from the island of Maui. With regards to traffic, it is unclear to which region

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you are referring to. Traffic conditions and impacts are discussed within Section 4.13 of the EIS. With regards to Central Maui, Section 4.13 states:

Traffic generation for diversified agricultural operations contrasts sharply against the large-scale monocrop sugar operations. Whereas the scale of sugar operations was massive and highly coordinated, diversified agriculture involves a multitude of smaller scale operations that are dispersed over time according to specific crop requirements. Unlike a monocrop, diversified crops would not necessarily share the same time frame for planting, tending, harvesting, processing and distribution. Therefore, traffic associated with those activities would be much more dispersed seasonally, over the work week and on a daily basis. Moreover, such traffic would largely be using an internal roadway network that was designed to minimize conflicts by vehicles used in sugar operations with the public roadway system.

At full operation, Mahi Pono expects to have some 790 farm employees. This compares to approximately 640 for HC&S. It is not certain if Mahi Pono's distribution of employees between the fields and a processing center near the former sugar mill in Puunene will be similar to former sugar employees between the fields and the mill. But, the expanse of the fields and the internal roadway system to the mill suggests that the impacts to public roads will not be significant.

Therefore, it is anticipated that traffic associated with the proposed diversified agricultural operations in Central Maui will not adversely affect peak-hour traffic conditions on public roadways. Nevertheless, should any traffic conflicts or traffic volume concerns on public roadways by diversified agricultural operations be identified in the future, measures can be taken to assess and address such concerns. Such measures may include signal timing adjustments to establish a minimum time between activation of signals stopping traffic along public streets or the addition of turning lanes.

Hence, in Central Maui, where if anywhere, there would be a traffic impact associated with the Proposed Action, such traffic impact would be contained to the agricultural fields and the internal roadway network there. Moreover, any increase in traffic is anticipated to be dispersed unlike traffic conditions during sugarcane operations. Thus, the Proposed Action is not anticipated to have adverse impacts to peak-hour traffic. Draft EIS Section 3.4.19 provides an assessment of traffic under the various alternatives to the Proposed Action.

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Comment 54: *Somewhere in the introductory chapters of the environmental impact statement there should be a clear statement that these auctioned “public waters” are for potentially private use and sale. They are governed by the State of Hawaii’s “public use” doctrine. Implications and impacts of that doctrine on the lease of these waters needs to be clearly explained and legally defended.*

Response 54: This is clearly noted throughout Chapter 2 of the EIS. Section 2.1 of the Draft EIS states in relevant part:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users.

Several other sections within the EIS acknowledge that the water proposed for the Water Lease is government owned water.

Regarding your comment about the implications of the "public use doctrine" we assume you are referring to Hawai'i's Public Trust Doctrine. We acknowledge that the Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease. As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action as shown in pages 1-25 to 1-27.

Comment 55: *With regard to 3.4.1 Public Services and Facilities, it is stated that there will be no impacts. Since we now have full employment on Maui Island, it can be presumed that the impacts will come from the additional 2,550 additional residents resulting from the Mahi Pono operations. Such a large number of **additional Maui Island residents will have numerous public services and facility impacts**, ranging from schools, playgrounds, traffic, potable water needs, wastewater, solid waste, to both police and fire protection.*

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Response 55: Please note that the Proposed Action is not anticipated to result in a population increase. As discussed in Response #10 above, it is assumed the majority of this 2,550 people will be from the island of Maui. Hence, no adverse impacts are expected to Public Service and Facilities under the Proposed Action. We also note that in its first 18 months on Maui, Mahi Pono had hired over about 200 workers, all of whom were living on Maui when hired. They were attracted by the type of work, wages and benefits.

Based on past hiring, nearly all future employees are expected to come from Maui. Also, attracting workers should be easier than in the recent past because of the long-term adverse economic effects of COVID-19 on tourism and Maui's economy. It may take years to rebuild the economy, and the Mahi Pono farm plan will contribute significantly to this rebuilding.

For clarification, Section 3.4.1 of the EIS (the section you cited) is within the alternatives analysis provided in Chapter 3. The impacts of the proposed Water Lease on Public Services and Facilities, as well as Infrastructure and Utilities is provided in Sections 4.14 and 4.15 of the EIS, respectively.

Comment 56: *Figure 4-1 on PDF 115 only has the green areas indicated. The developed areas in blue are not disclosed. Show the "Developed open space."*

Response 56: Figure 4-1 depicts the Central Maui Land Cover Map. The "Developed Open Space" depicted on Figure 4-1 are the roads that comprise of the internal road system within the Central Maui agricultural fields.

Comment 57: *Chapter 5. I was the Vice-Chairman of the General Plan Advisory Committee that developed the Countywide Policy Plan and the Maui Island Plan. In Chapter 5, the East Maui Water Lease Draft Environmental Impact Statement makes a mockery of the goals and objectives that are found in the two plans.*

Whenever there is a policy or objective in the table that would violate the two plans, the Draft-Environmental Impact Statement merely states that the goal or objective is "N/A" (Not Applicable). There are dozens of instances of this avoidance of compliance with the Maui Island Plan and the Countywide Policy Plan. Do you see even ONE instance where they show any impact? The tables are majorly incorrect, misleading and dishonest

Response 57: We respectfully disagree with your comment. The Proposed Action is not applicable or relevant to many of the goals, objectives, or policies of the Countywide Policy Plan or the Maui Island Plan, and therefore "N/A" is properly noted in those instances. Moreover,

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you did not identify any specific goals or objectives that are relevant and that you deem violated by the proposed Water Lease. We further note that the County of Maui Planning Department, in its comment letter on the Draft EIS, wrote that "the proposal is consistent with County long-range plans, such as the Maui Island Plan and our community plans, which include policies and actions to support agriculture, sustainable local food source, conservation, open space and business. In addition, they call for the protection of the environment, near shore waters and water source/aquifers." The Proposed Action does not specifically relate to every single policy and objective as is the case with any project, however, the Proposed Action is supportive of numerous policies and objectives in the plans discussed in Chapter 5.

Comment 58: *If the Final-EIS persists in indicating that either or both the Maui Countywide Policy Plan or the Maui Island Plan do not have any negative impacts from an East Maui Water Lease, then it will be challenged vigorously as being a whitewash and unresponsive to the Maui County General plan.*

The policies and objectives of the two plans will be seriously impacted and violated. The fact that water has been removed from East Maui for over a century, coupled with the fact that less water will now be withdrawn, does not mean there will be no or a low level of impacts. The Final-EIS should make that clear and also indicate how those impacts will be mitigated. Impacts need to be addressed.

Response 58: We respectfully disagree with your comment regarding the Maui Countywide Policy Plan and the Maui Island Plan. As discussed in Response #57 above, the Proposed Action is not applicable or relevant to several of the objectives and policies listed in the various plans discussed within Chapter 5. Moreover, the County of Maui Planning Department determined that the proposed Water Lease is consistent with County long-range plans, such as the Maui Island Plan and community plans, which include policies and actions to support agriculture, sustainable local food source, conservation, open space and business. In addition, they call for the protection of the environment, near shore waters and water source/aquifers.

Several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions." HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From

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that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) report documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System. This has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. . The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown in pages 4-331 to 4-336.

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Comment 59: *In Appendix G on page 106, there is a very useful recommendation to form a Core Working Group. The paragraph headed by the word "Transparency", discusses a long-standing problem with skepticism over the water withdrawals that have been held in the past. The exact statement reads as follows, "The proposed action has elicited skepticism and distrust over many decades, and these feelings prevent willingness for participating in mediation and collaboration. While developing trust among the various groups will be challenging, the first step is transparency. Being open about intent, plans and activities can begin to establish credibility and open the door to dialogue."*

This is an insightful recommendation and needs to be followed up, earlier rather than later. Many issues will arise over the succeeding months and years, before and after the lease is issued. There needs to be an excellent relationship between the leaseholder and the broader Maui community. The leaseholder should not be afraid to create the recommended Core Working Group that will serve not just as a "yes" sounding board. It should be a group that can critique operations, evaluate lease compliance and provide useful advice that must be handled appropriately by the leaseholder.

Response 59: Your reference is to "Recommended Mitigation" section of the SIA. Please refer to Response #49 above. Should the BLNR make this a requirement of the Water Lease, the Applicant will comply with all conditions of the Water Lease.

Comment 60: *Missing from the Draft-EIS is a comprehensive analysis of the effects on Maui's economy of having a water lease controlled by an off-island entity. If the water lease is obtained by a non-Maui or non-Hawaii entity whether it be based in California or Montreal, there are significant impacts to Maui's economy that need to be understood, analyzed, and if necessary, mitigated.*

Response 60: Regarding your comment about the economic impacts of the Water Lease, these impacts are discussed in detail in the analysis conducted for the Economic and Fiscal Impact Study report attached as Appendix H to the EIS and is summarized in Section 4.7.3 of the EIS as noted in Response #13 above. Specifically, Section 4.7.3 discusses the impacts of the Proposed Action, including a discussion of operational costs, revenue, employment and earnings related to the EMI Aqueduct System; agricultural operations in Upcountry Maui, Central Maui, and East Maui (i.e., taro cultivation); and the impact on public/domestic water supplies (and related issues) in Nāhiku and Upcountry Maui. These economic impacts are anticipated to be the same no matter whether the lessee is a Hawai'i entity or not.

Comment 61: *Presumably, the use of the water from the lease areas will generate very sizable profits. If these profits are going to be shipped elsewhere as now happen so often with Maui's*

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many off-island, owned hotels, there would be negative impacts by comparison to having that water utilized and operated by a Water Authority or some other institution that is locally based. Revenues and profits would circulate and multiply on-island.

Because of this impact of exported, disappearing profits, the Final-EIS must describe how those funds could remain in Maui and benefit the residents of Maui, solving problems such as affordable housing, highways, infrastructure, etc. Profits draining away from our tourist industry have resulted in local residents being unable to afford a home. Similarly, an off-island leaseholder could do similar damage to its own employees who would have difficulty purchasing or even renting a home.

Response 61: Regarding your comment about the economic impacts of the Water Lease, these are discussed in detail in the analysis conducted for the Economic and Fiscal Impact Study report attached as Appendix H to the EIS, and in the East Maui Water Lease: Agricultural and Related Economic Impacts report provided as Appendix I, and are summarized in Section 4.7.3 and Section 4.7.3 of the EIS. Please also see Response #13 above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Attachment #1

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII


In the Matter of Contested Case Regarding) DLNR File No.: 01-05-MA
Water Licenses at Honomanu, Keanae,)
Nahiku, and Huelo, Maui)
)
)
)
)
_____)

**ORDER RE ALEXANDER & BALDWIN, INC.'S AND EAST MAUI
IRRIGATION COMPANY, LIMITED'S SUBMISSION OF ENVIRONMENTAL
IMPACT STATEMENT SCOPE OF WORK FILED JUNE 9, 2016**

On June 9, 2016, Alexander & Baldwin, Inc. (A&B) and East Maui Irrigation Company, Limited (EMI) filed a Submission of Environmental Impact Statement Scope of Work (Scope of Work) in response to the Order for A&B to Commence the Environmental Review Process and Deferring Decision on Petitioners' Motion to Establish Scope of Reconvened Contested Case Proceedings filed on April 14, 2016 (Board's Order). Petitioner, Nā Moku Aupuni O Ko'olau Hui, filed a Response to A&B and EMI's Scope of Work on June 17, 2016.

The Board of Land and Natural Resources (Board) notes that the Scope of Work sets forth the information requested in the Board's Order. A&B and EMI should proceed with the preparation of an environmental impact statement (EIS) in as expeditious manner as possible. A&B and EMI should copy the Board on any notices that are sent out in connection with the EIS.

SO ORDERED this 8th day of July, 2016.



SUZANNE D. CASE¹
Presiding Officer
Board of Land and Natural Resources

¹ The Board members have delegated authority to Suzanne Case to sign this Order on behalf of the Board.

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAI'I

In the Matter of Contested Case Regarding) DLNR File No.: 01-05-MA
Water Licenses at Honomanu, Keanae,)
Nahiku, and Huelo, Maui)
)
)
)
)
)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following document:

- 1. ORDER RE ALEXANDER & BALDWIN, LIMITED'S SUBMISSION OF ENVIRONMENTAL IMPACT STATEMENT SCOPE OF WORK FILED JUNE 9, 2016

was duly served upon the following parties as indicated, by means of State Messenger or U.S. Mail, postage prepaid on July 11, 2016, addressed as follows:

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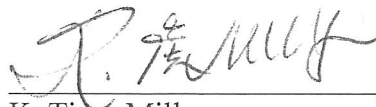
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Dated: Honolulu, Hawai'i, July 11, 2016



K. Tiger Mills
Department of Land & Natural Resources
State of Hawai'i

**Scope of Services for
Preparation of a Chapter 343,
Hawai‘i Revised Statutes
Environmental Impact
Statement
for**

**PROPOSED LEASE FOR THE
NĀHIKU, KE‘ANAE, HONOMANŪ,
AND HUELO LICENSE AREAS**

Prepared for:

**Alexander & Baldwin, Inc. and
East Maui Irrigation Company, Ltd.**

June 2016

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MUNEKIYO HIRAGA

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APPENDIX

Appendix A. Order for A&B to Commence the Environmental Review Process and Deferring Decision on Petitioners’ Motion to Establish Scope of Reconvened Contested Case Proceedings

I. INTRODUCTION

I. INTRODUCTION

A. BACKGROUND

In May 2001, Alexander & Baldwin, Inc. and East Maui Irrigation Company, Ltd. (EMI) (also collectively referred to as A&B) filed an Application for the Sale of Lease at Public Auction (“A&B Lease Application”) with the Board of Land and Natural Resources (BLNR) seeking a long-term 30-year lease for the “*right, privilege, and authority to enter and go upon*” the Nāhiku, Ke‘anae, Honomanū, and Huelo license areas “*for the purpose of developing, diverting, transporting, and using government-owned waters*”. Compliance with the requirements of Chapter 343, Hawaii Revised Statutes (HRS) is necessary prior to the BLNR’s consideration of the long-term lease request. By order dated April 14, 2016, the BLNR directed A&B, to provide to the Board, a scope of work for the preparation and processing of an environmental review document pursuant to Chapter 343, HRS. See **Appendix “A”**. In preparing the scope of work, A&B has assumed that an Environmental Impact Statement (EIS) process instead of an Environmental Assessment process would be the appropriate means of addressing the requirements of Chapter 343, HRS, for the proposed lease request. The trigger for compliance with Chapter 343, HRS environmental review is the use of state lands. It is assumed that the BLNR will be the Accepting Authority for the EIS.

It is noted that the BLNR’s order required specific content requirements to be incorporated in the scope of work, as follows:

1. The scope of work should distinguish those portions of the EIS that can be undertaken prior to the Commission on Water Resource Management’s (CWRM) decision on the petition to amend the Interim Instream Flow Standards (IIFS) from those that require a decision from the CWRM prior to completion.
2. The scope of work should demonstrate compliance with requirements contained in Hawai‘i Administrative Rules, Section 11-200-17.
3. The scope of work should include a tentative schedule for commencement and completion of various portions of the scope of work.

With respect to the EIS schedule noted in Item No. 3, above, the order states that to the degree that A&B’s decision to transition away from sugar cane cultivation affects the ability of, or timing for A&B to complete portions of the environmental review document, that should be noted in the scope of work.

This report sets forth the scope of work for the preparation and processing of an EIS, as required by the BLNR.

B. HISTORY OF WATER LEASES

The A&B Lease Application seeks to continue the operation by A&B subsidiary, EMI, of the East Maui aqueduct system which is an integrated system of diversions, ditches, intakes, and tunnels that collects water from streams located on the rainy windward slopes of East Maui and transports it to A&B's sugar cane fields in Central Maui, as well as to the Maui County Department of Water Supply for the domestic water needs of Upcountry Maui and the irrigation needs of small farms throughout Upcountry as well as in the Kula Ag Park. The watersheds from which it collects water total approximately 50,000 acres, of which EMI owns approximately 17,000 acres. Approximately 33,000 acres in the Huelo, Honomanū, Ke'anae, and Nāhiku watersheds are owned by the State of Hawai'i and have historically been leased to EMI for the purposes of developing, diverting, transporting and using the government-owned waters.

The aqueduct system was constructed in phases beginning in 1876 in accordance with agreements between EMI's predecessor entities and the Kingdom of Hawai'i and later the Territory of Hawai'i. Major milestone completion dates of the current system include the original 17-mile ditch in 1878, Koolau Ditch in 1904, the Haiku Ditch in 1914, the Kauhikoa Ditch in 1915, and the Wailoa Ditch in 1923. Since 1938, the relationship between the government of Hawai'i and EMI with regard to the coordinated operation of the Ditch System on government and EMI owned lands has been based on an agreement (the "1938 Agreement") dated March 18, 1938 between the Territory of Hawai'i and EMI. The 1938 Agreement provided a framework for a transition from a patchwork of previously issued water leases with differing lease and rental terms, to the subsequent issuance by the Territory, following public auction, of long-term water lease for each of the four (4) watersheds that comprise the current license areas.

The four (4) license areas and their respective most recent long-term lease terms are listed in **Table 1**. After the expiration of the terms of the long-term lease, revocable permits were issued. The revocable permits are issued by the BLNR and administered by the Department of Land and Natural Resources' (DLNR) Land Division.

Table 1. License Areas and Final Lease Before Conversion to Revocable Permits

License Area	General Lease Number	Term
Nāhiku	GL 3505	1955-1976
Ke‘anae	GL 3349	1950-1971
Honomanū	GL 3695	1962-1986
Huelo	GL 3578	1960-1981

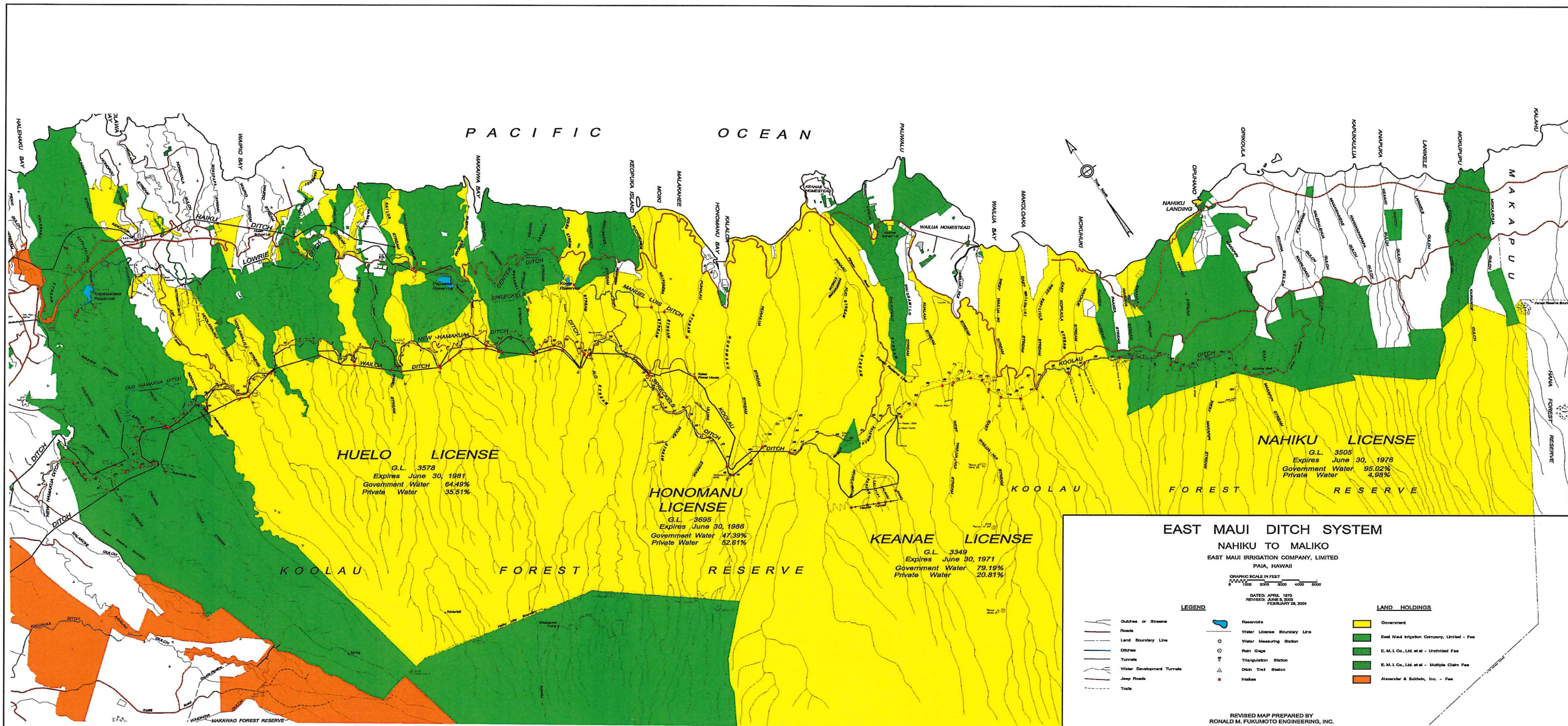
The location of the four (4) license areas are illustrated in **Figure 1** and described in **Table 2** below.

Table 2. License Areas

License Area	Tax Map Key	Area	Revocable Permit No.
Nāhiku	(2)1-2-04:05, 07	10,111.220 acres, more or less	S-7266
Ke‘anae	(2)1-1-02:02 (por.)	10,768.000 acres, more or less	S-7265
Honomanū	(2)1-1-001:44	3,381.000 acres, more or less	S-7263
Huelo	(2)1-1-001:05 (2)2-9-014: 01, 05, 11, 12, 17	8,752.690 acres, more or less	S-7264

As noted previously, the A&B Lease Application was filed with the BLNR in May 2001, seeking a long-term, 30-year lease rather than continuing with year-to-year revocable permits. Shortly thereafter, Na Moku Aupuni O Koolau Hui, Inc. (“Na Moku”) and Maui Tomorrow requested a contested case hearing, with Native Hawaiian Legal Corporation (NHLC) filing on behalf of petitioners Na Moku, Elizabeth Lapenia, Beatrice Kekahuna, and Marjorie Wallett. (In May 2007, Elizabeth Lapenia withdrew from the case and is no longer represented in it.) Concurrently, the Petitioners filed with the Commission on Water Resources Management (CWRM) a Petition to Amend the Interim Instream Flow Standard (IIFS) for 27 Streams in East Maui.

CWRM has not issued a final decision on the IIFS for the 27 streams, which is the subject of a contested case proceeding. The BLNR has not reconvened the contested case hearing for the A&B Lease Application pending the outcome of the IIFS proceedings.



Source: East Maui Irrigation Company, Ltd.

Figure 1 Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas
Map of License Areas

NOT TO SCALE



Prepared for: Alexander & Baldwin, Inc. and
East Maui Irrigation Company, Ltd.



C. STREAMS WITHIN LICENSE AREAS

There are 40 streams within the four (4) license areas. Of these 40 streams, A&B currently diverts water from 36 of these streams, but is in the process of permanently abandoning all of its diversions on and restoring water to five (5) of these 36 streams. In light of this restoration action, A&B requests to continue to divert water from 31 streams. See **Table 3**. The EIS shall assess the impacts of the “*right, privilege, and authority to enter and go upon*” the license areas “*for the purpose of developing, diverting, transporting, and using government-owned waters*” for the 31 streams.

Table 3. License Area Streams

License Area	No.	Stream Name	Subject to Petition to Amend IIFS?	Notes on Diversion
Nahiku License Revocable Permit No. S-7266	1	Makapipi	Yes	
	2	Hanawi	Yes	
	3	Kapaula	Yes	
Keanae License Revocable Permit No. S-7265	4	Waiaaka	Yes	
	5	Paakea	Yes	
	6	Puakea	No	
	7	Waiohue	Yes	
	8	Puakaa	Yes	
	9	Kopiliula	Yes	
	10	East Wailua-iki	Yes	
	11	West Wailua-iki	Yes	
	12	East and West Wailuanui	Yes	Planned for full and permanent restoration
	13	Waikani*	Yes	Not diverted
	14	Kualani	Yes	Not diverted (stream is tributary of Waiokamilo)
	15	Waiokamilo	Yes	Fully restored in 2007
	16	Palauhulu	Yes	Planned for full and permanent restoration
	17	Waianu/Ohia	Yes	Not diverted
Honomanū License - Revocable Permit No. S-7263	18	Piinaau	Yes	Planned for full and permanent restoration
	19	Nuaailua	Yes	
	20	Honomanū	Yes	
	21	Kolea/Punalau	Yes	
Huelo License	22	Haipuaena	Yes	
	23	Puohokamoa	Yes	

License Area	No.	Stream Name	Subject to Petition to Amend IIFS?	Notes on Diversion
Revocable Permit No. S-7264	24	Wahinepee	Yes	
	25	Alo	Yes	
	26	Waikamoi	Yes	
	27	Kolea	No	
	28	Punaluu	No	
	29	Kaaiea	No	
	30	Oopuola	No	
	31	Puehu	No	
	32	Nailiilihaele	No	
	33	Kailua/Ohanui	No	
	34	Hanauana	No	
	35	Hoalua	No	
	36	Puolua/Hanehoi	Yes	Planned for full and permanent restoration
	37	Waipio	No	
	38	Mokupapa	No	
	39	Hoolawa-Liili/Hoolawa-Nui	No	
40	Honopou	Yes	Planned for full and permanent restoration	
* Waikani is listed on this table because a Petition to amend the IIFS for Waikani has been filed. Waikani, however, is a waterfall on the Wailuanui Stream.				

D. FORMAT FOR DOCUMENTING THE EIS SCOPE OF WORK

The EIS scope of work described in this report reflects the process-oriented nature of Chapter 343, HRS environmental review documents. Therefore, while the scope of work presented herein seeks to be as comprehensive as possible in terms of defining actions to be managed and implemented by the EIS preparer, input received from agencies, organizations, and the public during various phases of document preparation and review may be recognized and incorporated into the EIS by the EIS preparer and Accepting Authority.

The EIS scope of work presented in this report addresses topic areas consistent with the BLNR's order and is organized by section headings, as summarized in **Table 4**.

Table 4. Summary of Report Organization

Report Chapter	Subject Matter
Chapter II	Scope of Work for the EIS Preparation Notice (EISPN) and Attendant Consultation/Scoping Process
Chapter III	Scope of Work for the Preparation of the Draft EIS
Chapter IV	Scope of Work for the Preparation of the Final EIS
Chapter V	Preliminary Time Schedule for the EIS Process

**II. SCOPE OF WORK FOR THE
ENVIRONMENTAL IMPACT
STATEMENT PREPARATION
NOTICE (EISPN) AND
ATTENDANT
CONSULTATION/SCOPING
PROCESS**

II. SCOPE OF WORK FOR THE ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE (EISPN) AND ATTENDANT CONSULATION/SCOPING PROCESS

A. ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE DEFINING THE PROPOSED ACTION

The preparation of the Draft and Final EIS documents is guided by the provisions of Hawaii Administrative Rules (HAR), Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules. The initial document preparation phase of the EIS process is the preparation of the EIS Preparation Notice (EISPN). The EISPN addresses the content requirements of an Environmental Assessment and serves as a mechanism for soliciting early input from agencies, citizen groups and individuals. In this instance, comments received on the EISPN would serve to identify key issues which would be addressed in the Draft EIS and Final EIS.

The EISPN will identify the proposed action to be assessed during the EIS process. In this case, the proposed action is a long-term 30-year lease for the *“right, privilege, and authority to enter and go upon”* the license areas *“for the purpose of developing, diverting, transporting, and using government-owned waters”* from the 31 streams in the Nāhiku, Ke‘anae, Honomanū, and Huelo license areas. The lease will not allow more water to be diverted than allowed by the IIFS decisions, currently pending before the CWRM, and as may be further modified in the future.

As noted previously, the petition to amend the IIFS for 27 streams is pending with the CWRM. Pursuant to a court ruling made in response to the appeal of a 2003 BLNR decision in the contested case hearing for the A&B Lease Application, the BLNR may wait for the CWRM to act on the IIFS petitions and rely on CWRM’s determination as to the minimum instream flows necessary to protect traditional and customary practices of native Hawaiians, rather than conducting its own independent investigation of these issues as part of the lease process. Any disposition of water by the BLNR in connection with the lease application would be subject to the amended IIFS established by CWRM. Accordingly, the environmental review process under Chapter 343, HRS cannot be properly completed until the CWRM issues a final decision on the petitions to amend the IIFS.

The timing of a final decision from the CWRM on the petitions to amend the IIFS is unknown. A preliminary time schedule for the EIS process as it relates to CWRM's decision on the petitions to amend the IIFS is discussed in Chapter V. As noted in Chapter V, there are some portions of the EIS process that may be undertaken prior to the CWRM decision on the amended IIFS while other tasks will require a decision from CWRM prior to EIS completion.

In the event the EISPN is published prior to the CWRM decision on the amended IIFS, the proposed action described in the EISPN shall state that the amount of water to be diverted will be dependent on the pending petitions to amend the IIFS and that the Draft EIS and supporting technical studies will assess the impacts of the water lease, taking into account the water availability set forth by the CWRM decision on amending the IIFS for the 27 streams. The EISPN should identify the parameters, such as the CWRM decision, that will define the proposed action that will be assessed in the Draft EIS.

B. IDENTIFICATION OF ISSUES TO BE ADDRESSED IN THE ENVIRONMENTAL IMPACT STATEMENT

Issues identification may not be limited to the EISPN review process, but may also include a public scoping process which may consist of meetings with interested and affected stakeholders. Issues identification may also be defined through review of testimony and filings with the CWRM. Other means of soliciting input for purposes of identifying issues to be addressed in the EIS document include review of testimony and documents associated with related water use matters affecting East Maui Streams. Irrespective of the method of identifying issues and concerns, the EIS preparer shall utilize best efforts to thoroughly identify issues which should be addressed in the EIS document.

It is noted that issues identification is a work element which is not limited to a specific phase of the EIS process (i.e., issues identification extends beyond the EISPN phase of work). For example, as technical studies are prepared and their respective findings are disclosed in the Draft EIS, comments on the studies may lead to new questions and comments which should be addressed in the Final EIS.

With respect to this EIS Scope of Work, an initial list of issue topics which are deemed appropriate for consideration in the EIS are summarized in **Table 5**. The issue categories and topics listed in **Table 5** follow, in part, the analytical framework for defining instream flow standards. It is expected that this list will be expanded once the EISPN and Draft EIS processes are initiated.

Table 5. Preliminary List of Issues to be Addressed in the EIS

Issue Category	Topics to be Addressed in EIS
Existing Conditions	<ul style="list-style-type: none"> • Existing and Surrounding Land Use • Topography and Soil Characteristics • Climate • Hazardous Materials/Substances
Hydrogeology	<ul style="list-style-type: none"> • Groundwater Interaction • Surface-Water Flows
Fish/Wildlife Habitat	<ul style="list-style-type: none"> • Native Vertebrates • Invertebrates • Invasive Species • Abundance • Diversity • Distribution • Species Sustainability
Ecosystem Maintenance	<ul style="list-style-type: none"> • Estuaries • Wetlands • Riparian areas • Nearshore Waters
Water Quality	<ul style="list-style-type: none"> • Water Quality Standards • Total Maximum Daily Load
Natural Hazards	<ul style="list-style-type: none"> • Flooding • Tsunami Exposure
Historic Resources	<ul style="list-style-type: none"> • Archaeology • Cultural Resources
Hawaiian Rights	<ul style="list-style-type: none"> • Traditional and Customary Rights and Practices • Taro Cultivation • Appurtenant Rights
Non-Instream or End Uses of Diverted Water	<ul style="list-style-type: none"> • Water Delivery Systems • Domestic/Municipal Use • Agricultural Uses • Agricultural Productivity • Present vs. Future Uses • Economic Impacts
Aesthetics	<ul style="list-style-type: none"> • Scenic Views
Recreation	<ul style="list-style-type: none"> • Swimming • Nature Study • Fishing • Hiking
Public Services	<ul style="list-style-type: none"> • Police • Fire • Medical Services
Economy	<ul style="list-style-type: none"> • Employment and Personal Income • Fiscal Impacts
Infrastructure	<ul style="list-style-type: none"> • Roadways • Wastewater Systems (Private and Municipal) • Water Systems (Private and Municipal)

Issue Category	Topics to be Addressed in EIS
	<ul style="list-style-type: none"> • Drainage System • Diversion Infrastructure • Other Utilities (Electrical, Communication)

C. PREPARATION OF THE EISPN DOCUMENT

The EIS preparer shall develop the EISPN in accordance with HAR, Title 11, Chapter 200, Sections 11-200-10 and 11-200-15. In this regard, the EISPN shall meet the requirements for content compliance, as summarized in **Table 6**.

Table 6. Summary of Content Requirements of the EISPN

HAR, Title II, Section 200 Reference	Content Requirement
11-200-10 (1)	Identification of applicant or proposing agency
11-200-10 (2)	Identification of approving agency, if applicable
11-200-10 (3)	Identification of agencies, citizen groups, and individuals consulted in making the assessment
11-200-10 (4)	General description of the action’s technical, economic, social, and environmental characteristics
11-200-10 (5)	Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps
11-200-10 (6)	Identification and summary of impacts and alternatives considered
11-200-10 (7)	Proposed mitigation measures
11-200-10 (8)	Agency determination or, for draft environmental assessments only, an anticipated determination
11-200-10 (9)	Findings and reasons supporting the agency determination or anticipated determination
11-200-10 (10)	Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared
11-200-10 (11)	List of all permits and approvals (State, federal, county) required

Inasmuch as the EISPN serves as notice that an EIS will be prepared and will be used as a scoping document, the content requirements set forth in **Table 6** will not be fully addressed. The EISPN document shall indicate, preliminarily, studies to be completed and issues to be analyzed in further detail in the Draft EIS.

D. CONSULTED PARTIES

The EIS preparer shall identify agencies, stakeholders, and community groups that will be consulted during the preparation of the EIS. The Office of Environmental Quality Control provides guidance on agencies and organizations that should receive copies of the Draft EIS and Final EIS. It is noted that A&B will be consulting with the Department

of Hawaiian Home Lands (DHHL) early in the process with respect to water reservations pursuant to Section 171-58(g), HRS, which states:

The department of land and natural resources shall notify the department of Hawaiian home lands of its intent to execute any new lease, or to renew any existing lease of water rights. After consultation with affected beneficiaries, these departments shall jointly develop a reservation of water rights sufficient to support current and future homestead needs. Any lease of water rights or renewal shall be subject to the rights of the department of Hawaiian home lands as provided by section 221 of the Hawaiian Homes Commission Act.

**III. SCOPE OF WORK FOR
THE PREPARATION OF THE
DRAFT ENVIRONMENTAL
IMPACT STATEMENT**

III. SCOPE OF WORK FOR THE PREPARATION OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

A. DRAFT ENVIRONMENTAL IMPACT STATEMENT (EIS) CONTENT REQUIREMENTS

The EIS preparer shall prepare the Draft EIS in accordance with requirements set forth in Hawaii Administrative Rules (HAR), Title 11, Chapter 200, Section 11-200-16 and Section 11-200-17. Importantly, the Draft EIS “*shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action.*”

Content requirements of the Draft EIS document are summarized in **Table 7**.

Table 7. Summary of Content Requirements of the Draft EIS

HAR, Title 11, Section 200 Reference	Content Requirement Summary
11-200-17(b)	Draft EIS Summary Sheet
11-200-17(c)	Table of Contents
11-200-17(d)	Statement of Purpose and Need
11-200-17(e)	Project Description
11-200-17(f)	Alternatives to the Proposed Action
11-200-17(g)	Description of the Environmental Setting
11-200-17(h)	Relationship of the Proposed Action to Land Use Plans, Policies and Controls
11-200-17(i)	Discussion of Probable Impacts
11-200-17(j)	Relationship between Local Short-Term Uses of the Environment and Maintenance/Enhancement of Long-Term Productivity
11-200-17(k)	Description of Irreversible and Irrecoverable Commitments of Resources
11-200-17(l)	Discussion of Probable Adverse Environmental Effects
11-200-17(m)	Discussion of Mitigation Measures to Address Adverse Impacts
11-200-17(n)	Summary of Unresolved Issues
11-200-17(o)	Listing of Governmental Agencies, Organizations and Individuals Consulted in Preparing the Draft EIS
11-200-17(p)	Comments Received and Responses Made During the Consultation Process

With respect to the Draft EIS's section on "Alternatives to the Proposed Action" (Section 11-200-17(f)), the EIS preparer shall consider the outcome of the CWRM's decision on the IIFS. While the decision of the CWRM on the IIFS will dictate the framework for conducting the analysis of alternatives in the EIS, the EIS preparer shall nonetheless, examine, at a minimum, the "No Diversion Alternative", among others.

With respect to the Draft EIS's section on "Relationship of the Proposed Action to Land Use Plans, Policies, and Controls" (Section 11-200-17(h)), the EIS preparer shall, at a minimum, consider the following:

- Hawaii State Plan
- Hawaii State Functional Plans
- Hawaii State Land Use Designations
- Maui Countywide Policy Plan
- Maui Island Plan
- Applicable Maui Community Plans
- Maui Water Use and Development Plan
- County of Maui Zoning
- Hawaii Coastal Zone Management Program

B. ELEMENTS OF THE DRAFT EIS REQUIRING CWRM DECISION ON INTERIM INSTREAM FLOW STANDARDS

In preparing the Draft EIS, the EIS preparer shall consider those environmental, socio-economic, public services and infrastructure parameters for which the CWRM's decision to amend the IIFS is needed. For those elements requiring a CWRM decision, the completion of the Draft EIS will be deferred until such decision is rendered. **Table 8** summarizes, preliminarily, parameters to be analyzed in the Draft EIS, and identifies those elements for which a CWRM decision on the IIFS is required.

Table 8. Preliminary List of Draft EIS Issues and Dependency on CWRM Decision on IIFS

Issue Category	Topics to be Addressed in EIS	CWRM Decision Required to Complete EIS Analysis?
Existing Conditions	Existing and Surrounding Land Use	No
	Topography and Soil Characteristics	No
	Climate	No
	Hazardous Materials/Substances	No
Hydrogeology	Groundwater Interaction	Yes
	Surface-Water Flows	Yes
Fish/Wildlife Habitat	Native Vertebrates	Yes
	Invertebrates	Yes
	Invasive Species	Yes
	Abundance	Yes
	Diversity	Yes
	Distribution	Yes
	Species Sustainability	Yes
Ecosystem Maintenance	Estuaries	Yes
	Wetlands	Yes
	Riparian areas	Yes
	Nearshore Waters	Yes
Water Quality	Water Quality Standards	Yes
	Total Maximum Daily Load	Yes
Natural Hazards	Flooding	Yes
	Tsunami Exposure	No
Historic Resources	Archaeology	No
	Cultural Resources	Yes
Hawaiian Rights	Traditional and Customary Rights and Practices	Yes
	Taro Cultivation	Yes
	Appurtenant Rights	Yes
Non-Instream or End Uses of Diverted Water	Water Delivery Systems	Yes
	Domestic/Municipal Use	Yes
	Agricultural Uses	Yes
	Agricultural Productivity	Yes
	Present vs. Future Uses	Yes
	Economic Impacts	Yes
Aesthetics	Scenic Views	Yes
Recreation	Swimming	Yes
	Nature Study	Yes
	Fishing	Yes
	Hiking	No

Issue Category	Topics to be Addressed in EIS	CWRM Decision Required to Complete EIS Analysis?
Public Services	Police	No
	Fire	No
	Medical Services	No
Economy	Employment and Personal Income	Yes
	Fiscal Impacts	Yes
Infrastructure	Roadways	No
	Wastewater Systems (Private and Municipal)	No
	Water Systems (Private and Municipal)	Yes
	Drainage System	No
	Diversion Infrastructure	Yes
	Other Utilities (Electrical, Communication)	No

In addition to the assessment parameters listed in **Table 8**, the EIS preparer shall undertake an analysis of cumulative and secondary impacts. Cumulative impact is defined as:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

A secondary impact is defined as:

Effects which are caused by the action and are later in time or farther removed in distance, but are still reasonable foreseeable. Indirect effects may include growth inducing effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems. Including ecosystems.

In the context of the water lease request, secondary impacts of the noninstream uses of the diverted water should also be assessed. For example, future County domestic and agricultural water demands needed to implement anticipated growth pursuant to the Maui Island Plan may be viewed as an impact “later in time” or “further removed in distance”, but still reasonably foreseeable.

C. TECHNICAL STUDIES TO BE INCORPORATED IN THE EIS

Specific topics to be addressed in the EIS may require specialized studies to ensure that current conditions, impact analysis and proposed mitigation measures are appropriately considered by qualified specialists in their respective fields of study. Such specialists, for example, may include biologists, hydrologists, archaeologists, engineers, cultural specialists, and economists. The foregoing list of specialists are not exhaustive. For this reason, the EIS preparer shall assess the issues identified, as described previously, to determine whether specific technical studies are needed to address current conditions, analysis of impacts and potential mitigation measures.

With respect to the EIS for the lease application submitted by A&B, relevant studies which have been previously completed, are summarized in **Table 9**.

Table 9. Technical Studies Previously Completed Which Hold Relevance to the EIS Scope of Work

A. U.S. Geological Survey Studies	
1.	Stephen B. Gingerich, <i>Ground-Water Occurrence and Contribution to Streamflow, Northeast Maui, Hawaii</i> , Water-Resources Investigations Report 99-4090 (1999)
2.	Patricia J. Shade, <i>Water Budget of East Maui, Hawaii</i> , Water-Resources Investigations Report 98-4159 (1999)
3.	Stephen B. Gingerich, <i>Ground Water and Surface Water in the Haiku Area, East Maui, Hawaii</i> , Water-Resources Investigations Report 98-4142 (2000)
4.	Martha A. Scholl, Stephen B. Gingerich and Gordon W. Tribble, <i>The influence of microclimates and fog on stable isotope signatures used in interpretation of regional hydrology: East Maui, Hawaii</i> , 264 <i>Journal of Hydrology</i> 170 (2002)
5.	Stephen B. Gingerich, <i>Median and Low-Flow Characteristics for Streams under Natural and Diverted Conditions, Northeast Maui, Hawaii</i> , Scientific Investigations Report 2004-5262 (2005)
6.	John A. Engott and Thomas T. Vana, <i>Effects of Agricultural Land-Use Changes and Rainfall on Ground-Water Recharge in Central and West Maui, Hawai'i, 1926-2004</i> , Scientific Investigations Report 2007-5103 (2007)
7.	Chui Ling Cheng, <i>Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawai'i</i> , Open-File Report 2012-1115 (2012)
8.	Letter to Lenore Ohye (Acting Deputy Director of CWRM) from Stephen S. Anthony (Director of Pacific Islands Water Science Center) re Discharge Measurements, Makapipi Stream, Maui, Hawai'i, September 13-17, 2010, Nov. 5, 2010
B. Division of Aquatic Resources Studies	
1.	Glenn R. Higashi, et al., <i>Stream Survey Reports</i> prepared for CWRM, DAR and Bishop Museum, June 2008. Stream Survey Reports were prepared for: Honopou, Hanehoi, Waikamoi, Puohokamoa, Haipuaena, Punalau, Honomanu, Nuaailua, Piihaau, Ohia, Waiokamilo, Wailuanui, West Wailuaiki, East Wailuaiki, Kopiliula, Waiohue, Paakea, Kapaula, Hanawi, and Makapipi streams.
2.	Letter from Robert Nishimoto (DAR) to Ken Kawahara (CWRM) dated Apr. 1, 2010
3.	Memo from Robert Nishimoto (DAR) to Ken Kawahara (CWRM) dated May 17, 2010
4.	Letter from Dan A. Polhemus (DAR) to CWRM dated Dec. 15, 2009
5.	James E. Parham, et al., <i>The Use of Hawaiian Stream Habitat Evaluation Procedure to Provide Biological Resource Assessment in Support of Instream Flow Standards for East Maui Streams</i> , Bishop Museum and DAR, Nov. 20, 2009

6.	Glenn R. Higashi, et al. <i>Monitoring Changes in Habitat, Biota, and Connectivity Resulting From Water Returns in the East Maui Streams of East Wailua Iki, and Waiohue</i> , DAR and Bishop Museum, Jan. 6, 2015
C. Commission on Water Resources Management Studies	
1.	CWRM, <i>Instream Flow Standard Assessment Report</i> , September 2008 and December 2009. Instream Flow Standard Assessment Reports prepared for: Honopou, Hanehoi, Piinaau, Waiokamilo, Waialuanui, Waikamoi, Puohokamoa, Haipuaena, Punalau, Honomanu, Nuaailua, Ohia, West Wailuaiki, East Wailuaiki, Kopiliua, Waiohue, Paakea, Waiaaka, Kapaula, Hanawi, and Makapipi streams
D. SWCA Environmental Consultants Studies	
1.	John I. Ford, Steven W. Carothers, Robert A. Kinzie III, <i>Status of Native Hawaiian Macrofauna in East Maui Streams and Biological Considerations For the Amendment of Interim Instream Flow Standards in Selected Streams (IIFS)</i> , SWCA White Paper, June 2009
E. Cultural Studies	
1.	County of Maui Planning Department, <i>Kalo Kanu O Ka'āina: A Cultural Landscape Study of Ke'anae and Wailuanui, Island of Maui</i> , July 1995
2.	Kepā Maly and Onaona Maly, <i>Wai O Ke Ola: He Wahi Mo'olelo No Maui Hikina</i> , 2002

The EIS preparer shall review the technical studies listed in **Table 9**, as well as other studies which may hold relevance to the EIS process. The EIS preparer shall determine whether the studies are current and whether they appropriately address the issues identified. Additionally, the EIS preparer shall determine whether other technical studies should be undertaken to ensure that proper analysis of issues are completed.

Preliminarily, **Table 10** provides a listing of additional technical studies which may be deemed warranted for the EIS.

Table 10. Additional Technical Studies to Support the EIS

Study	Consultant/Expert	CWRM Decision Required to Complete Technical Study? ^a
Biological Resources Survey	Biologist	Yes
Water Quality Study	Environmental Consultant	Yes
Surface and Groundwater Hydrology Assessment	Hydrologist	Yes
Agricultural Impact Assessment	Agricultural Economist	Yes
Archaeological Inventory Survey or Assessment	Archaeologist	No
Cultural Impact Assessment	Cultural Resources Expert	Yes
Diversion Infrastructure Assessment	Civil and/or Structural Engineer	Yes
Economic Impact Analysis	Economist	Yes
^a Where appropriate, preliminary work may be initiated for the foregoing studies, but completion of the studies would require CWRM's IIFS decision.		

Again, the full range of technical studies required for the EIS will be determined upon completion of the EISPN. The scope of analysis for each of the preliminarily identified studies listed in **Table 10** will need to be developed to address issues and concerns documented through the EISPN and related scoping efforts. For example, to the extent that the cultural reports previously prepared may have not addressed specific issues raised by comments to the EISPN, additional cultural impact analysis would be warranted. If the EIS preparer and cultural specialist determine that a newly prepared Cultural Impact Assessment is needed based on issues raised, then such new report would be prepared and incorporated in the Draft EIS.

**IV. SCOPE OF WORK FOR
THE PREPARATION OF THE
FINAL ENVIRONMENTAL
IMPACT STATEMENT**

IV. SCOPE OF WORK FOR THE PREPARATION OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT

The Final EIS shall be prepared in accordance with Hawaii Administrative Rules (HAR), Title 11, Chapter 200, Section 11-200-18. In summary, the EIS preparer will incorporate in the Final EIS, the following:

- The Draft EIS will be revised to incorporate substantive comments received during the consultation and review process.
- Reproduction of all letters received containing substantive questions, comments or recommendations.
- A list of persons, organizations, and public agencies commenting on the Draft EIS.
- The responses of the applicant or proposing agency to each substantive question, comment, or recommendation received in the review and consultation process.

Additionally, the EIS preparer shall prepare the Final EIS in a format which allows the reader to easily distinguish changes made to the text of the Draft EIS.

**V. PRELIMINARY TIME
SCHEDULE FOR THE
ENVIRONMENTAL IMPACT
STATEMENT PROCESS**

V. PRELIMINARY TIME SCHEDULE FOR THE ENVIRONMENTAL IMPACT STATEMENT PROCESS

A. OVERALL TIMEFRAME FOR THE PREPARATION AND PROCESSING OF THE ENVIRONMENTAL IMPACT STATEMENT

The overall timeframe for the preparation and processing of the EIS will, in part, depend on when the CWRM issues its decision with respect to the Petitions to Amend the IIFS. In this regard, two (2) timeline scenarios for the EIS preparation and processing have been developed. The scenarios presented herein are not intended to obligate the EIS preparer to complete the process within the timeframes noted. They are however, intended to provide project stakeholders a general understanding of tasks and milestones which govern the overall process timeline.

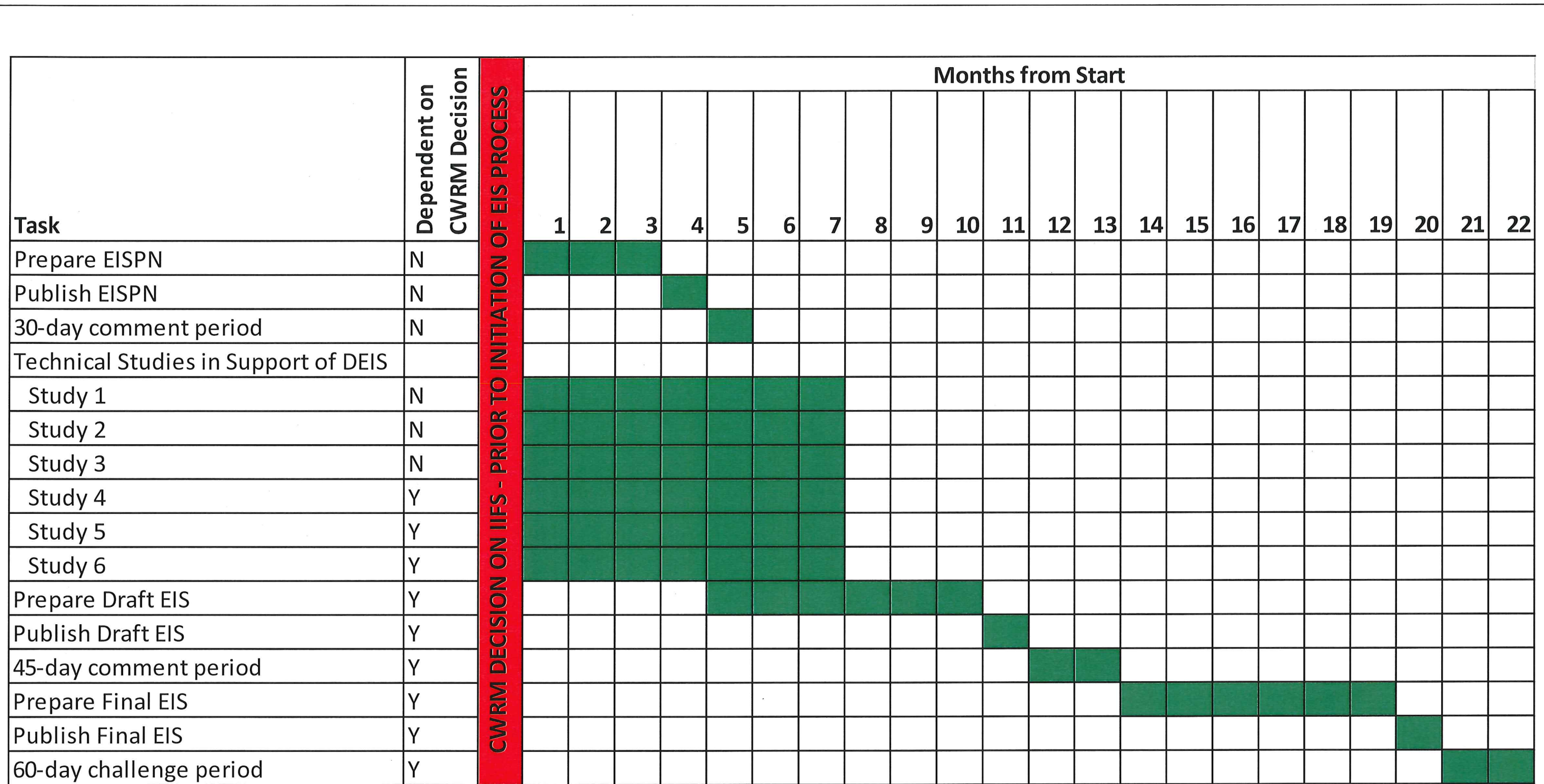
Two (2) timelines scenarios presented are as follows:

- **Scenario 1:** Timeline Assuming the CWRM Completes IIFS Decision-Making before the EIS Process is Initiated
- **Scenario 2:** Timeline Assuming the CWRM Completes IIFS Decision-Making after the EIS Process is Initiated

The formulation of the two (2) timeline scenarios assumes that there would be no appeal filed on the CWRM's decision. If an appeal is filed on the IIFS decision, the timeline scenarios would be based on the final IIFS decision once the appeal process has been completed.

1. Scenario 1 Timeline: Assumes CWRM Completes IIFS Decision-Making Before EIS Process is Initiated

The Scenario 1 Timeline is presented in **Figure 2**. The "Task" column in **Figure 2** reflects the major action items and milestones in the EIS preparation process. The "Months from Start" row at the top of the timeline indicates the estimated number of months associated with each of the tasks. The number of months assigned to each task is a best estimate only, but is considered reasonable in the context of the Chapter 343, HRS process. It is noted that the timeline presented is



Source: Munekiyo Hiraga

Figure 2 Proposed Lease for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas
 Scenario 1: CWRM Decision On IIFS Occurs Before the EIS Process Has Been Initiated

intended to be illustrative of the general process and would be further defined through the EIS process. For example, the specific technical studies and time required to prepare each would be defined by the EIS preparer and qualified technical consultant.

As noted above, Scenario 1 assumes that the CWRM completes its IIFS decision-making before the EIS process is started. Therefore, all of the technical studies which would be undertaken in support of the EIS can be initiated at the outset of the EIS preparation process. Under this scenario, the total duration to commence and complete the EIS is approximately 22 months.

2. **Scenario 2 Timeline: Assumes CWRM Completes IIFS Decision-Making After the EIS Process is Initiated**

The Scenario 2 Timeline is presented in **Figure 3**. The timeline's format is similar to Scenario 1, with the exception that the schedule is bifurcated as follows:

- Actions/milestones of the EIS which can be completed prior to the CWRM's decision-making on the IIFS
- Actions/milestones of the EIS which would be completed after the CWRM's decision-making on the IIFS.

The red vertical bar in the schedule reflects the undetermined time wherein the CWRM's decision on the IIFS is pending. Once the CWRM's action on the IIFS is completed, the EIS process can resume. Under this scenario, about eight (8) months of EIS work can be initiated before work would stop, pending the CWRM's decision. Once the CWRM completes its decision-making on the IIFS, an additional 19 months of work is estimated. If the CWRM decision occurs during the initial eight (8) months of EIS processing, the technical studies dependent on the CWRM decision can be initiated sooner.

As noted previously, the timeline is intended to be illustrative of the overall process and details with respect to the time required to prepare the technical studies and which studies (or portions thereof) would be initiated prior to the CWRM decision would be made by the EIS preparer and technical consultants.

It is noted that depending on the timeframe in which the CWRM IIFS decision is issued, there may be circumstances where some of the EIS work and technical studies undertaken prior to the IIFS decision may need to be reexamined or updated (i.e., if the IIFS decision takes longer than anticipated/assumed which impacts the applicability of the findings of the studies).

The variance in time between Scenario 1 and Scenario 2 is attributed to the unknown timeframe in which the IIFS decision will be made and the assumption that there will be EIS technical studies which cannot be initiated or completed until after the CWRM's IIFS decision process is completed.

3. **Timeline Qualifications**

The timelines presented for Scenario 1 and Scenario 2 represent a best estimate based on general parameters for EIS processing. The illustrative timelines assume that the EIS preparer and the DLNR will coordinate and resolve issues that may arise during the preparation and processing of the EIS in a timely manner. However, it is noted that there are several factors that can influence the timeline. Such factors may include:

- Significant comments from agencies, stakeholders, or members of the public during the review of the EISPN or Draft EIS that require additional coordination or the need for additional technical studies
- Findings from technical studies that lead to new questions or comments which should be addressed in the Final EIS
- The decision of HC&S to transition away from sugar cane cultivation may affect the overall timeline for the EIS. The repurposing of lands currently used for sugar cane production to alternative agricultural uses should be considered as part of the EIS's analysis of "non-instream or end uses of diverted water" section. Accordingly, the overall EIS timeline may be affected pending A&B's determination of alternative agricultural end use plans.

4. **Pre-EIS Time Requirements**

While **Figure 2** and **Figure 3** provide general guidance with regard to timeline parameters for the EIS, additional time which should be considered in the overall process is the time required for the procurement of the EIS consultant and qualified subconsultants required to prepare the various technical studies. The

procurement process and timeline has not yet been determined. However, a reasonable estimate of time to complete this pre-EIS phase of the process is 3 to 4 months.

APPENDIX

APPENDIX A.

Order for A&B to Commence the Environmental Review Process and Deferring Decision on Petitioners' Motion to Establish Scope of Reconvened Contested Case Proceeding

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

In the Matter of Contested Case Regarding) DLNR File No.: 01-05-MA
Water Licenses at Honomanu, Keanae,)
Nahiku, and Huelo, Maui)
)
)
)
)
)

**ORDER FOR A&B TO COMMENCE THE ENVIRONMENTAL REVIEW
PROCESS AND DEFERRING DECISION ON PETITIONERS' MOTION TO
ESTABLISH SCOPE OF RECONVENED CONTESTED CASE PROCEEDINGS**

On January 9, 2015, Petitioner Nā Moku Aupuni O Ko'olau Hui (Nā Moku) filed a Motion to Establish Scope of Reconvened Contested Case Proceedings (Petitioner's Motion). Alexander & Baldwin, Inc. and East Maui Irrigation Company, Ltd. (collectively A&B) filed a Memorandum in Opposition to Petitioner's Motion to Establish Scope of Reconvened Contested Case Proceedings on March 27, 2015. Petitioners filed a Supplemental Memorandum in Support of Motion to Establish Scope of Reconvened Contested Case Proceedings on March 27, 2015. A&B filed a Response to Petitioners' Supplemental Memorandum in Support of Motion to Establish Scope of Reconvened Contested Case Proceedings on April 10, 2015. Nā Moku filed a Reply in Support of Petitioner's Motion to Establish Scope of Reconvened Contested Case Proceedings on April 10, 2015.

The Board of Land and Natural Resources (Board) held oral arguments on Petitioner's Motion on May 8, 2015. During the oral argument, Nā Moku agreed to withdraw its objection to A&B doing an environmental assessment, which objection had originally been asserted at the May 25, 2001 meeting of the Board. The parties also agreed that the Board would defer decision making on the motion until further notice and to facilitate discussion between the parties regarding the lawsuit pending in circuit court¹ (2015 lawsuit) and an environmental assessment.

¹ *Carmichael, et al., v. Board of Land and Natural Resources, et al.*, Civ. No. 15-1-0650-04 RAN.

On June 15, 2015, the parties submitted a status report to the Board regarding the initiation of discussions between the parties. Nā Moku re-confirmed the withdrawal of its objection to A&B preparing the environmental review documents in connection with its application for a lease. The parties also agreed on a framework for initiating work on the environmental review process. The parties were still in discussion regarding the disposition of the 2015 lawsuit. Nā Moku was to request the BLNR to defer action on Petitioner's Motion while the parties continue discussions on beginning the environmental review process prior to the Commission on Water Resource Management's (CWRM) final decision on the petitions to amend interim instream flow standards (IIFS) in east Maui. No further filings were received from the parties.

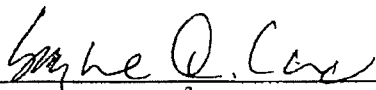
Petitioner's Motion argued that the contested case should be reconvened for the Board to require the timely preparation of an environmental assessment to disclose the impacts of the diversion of water from the four license areas (Honomanu, Keanae, Huelo and Nahiku) pursuant to revocable permits S-7263 (Honomanu), S-7264 (Huelo), S-7265 (Keanae) and S-7266 (Nahiku). Petitioner's Motion also urged to Board to reconvene the contested case in order for the Board to address its obligations pursuant to Hawaii Revised Statutes chapter 171.

During oral argument it became apparent that the key issue was the commencement of the environmental review process. Based on the records in this case and the argument presented to the Board, the Board orders A&B to commence the environmental review process in support of A&B's application for a lease of water from the license areas of Honomanu, Keanae, Huelo and Nahiku. The Board will defer decision making on Petitioner's Motion at this time.

Within sixty (60) days of this order A&B must provide to the Board a scope of work for the preparation of an environmental assessment or an environmental impact statement. The scope of work should distinguish those portions that can be undertaken prior to CWRM's final

decision on the petitions to amend IIFS in east Maui from those that require a decision from the CWRM prior to completion.² The scope of work should address, at a minimum, the content requirements contained in Hawaii Administrative Rules § 11-200-10 for an environmental assessments or § 11-200-17 for an environmental impact statement. Accompanying the scope of work should be a tentative schedule for commencement and completion of the various portions of the scope of work.

SO ORDERED this 14th day of April, 2016.



SUZANNE D. CASE³
Presiding Officer
Board of Land and Natural Resources

² The Board notes that on January 5, 2016 A&B announced that it would be transitioning out of farming sugar and would instead pursue a diversified agricultural model for its HC&S plantation on Maui. To the degree that the decision to transition away from sugar cane cultivation affects the ability of or timing for A&B to complete portions of the environmental review documents that should be noted in the scope of work.

³ The Board members have delegated authority to Suzanne Case to sign this Order on behalf of the Board.

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAI'I

In the Matter of Contested Case Regarding) DLNR File No.: 01-05-MA
Water Licenses at Honomanu, Keanae,)
Nahiku, and Huelo, Maui)
)
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_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following document:

- 1. ORDER FOR A & B TO COMMENCE THE ENVIRONMENTAL REVIEW
PROCESS AND DEFERRING DECISION ON PETITIONERS' MOTION TO
ESTABLISH SCOPE OF RECONVENED CONTESTED CASE PROCEEDINGS

was duly served upon the following parties as indicated, by means of State Messenger or U.S.
Mail, postage prepaid on April 14, 2016, addressed as follows:

Alan T. Murakami, Esq.
Camille K. Kalama, Esq.
Ashley K. Obrey, Esq.
Summer L. Sylva, Esq.
1164 Bishop Street, Suite 1205
Honolulu, Hawai'i 96813

Patrick Wong, Esq.
Caleb Rowe, Esq.
Kristin Tarnstrom, Esq.
Dept. of Corporation Counsel
County of Maui
200 S. High Street
Wailuku, Hawai'i 96793

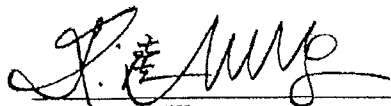
David Schulmeister, Esq.
Elijah Yip, Esq.
1000 Bishop Street, 10th Floor
Honolulu, Hawai'i 96813

Linda L.W. Chow, Esq.
Land/Transportation Division
Department of the Attorney General
Kekuanao'a Building
465 South King St., Room 300
Honolulu, Hawai'i 96813

Isaac Hall, Esq.
2087 Wells Street
Wailuku, Hawai'i 96793

Robert H. Thomas, Esq.
1600 Pauahi Tower
1001 Bishop Street
Honolulu, Hawai'i 96813

Dated: Honolulu, Hawai'i, April 14, 2016



K. Tiger Mills
Department of Land & Natural Resources
State of Hawai'i

From: [Mavis Oliveira-Medeiros](#)
To: [Public Comment](#)
Subject: Fwd: d-eis East Maui water lease
Date: Thursday, November 7, 2019 8:31:53 PM
Attachments: [Earle's letter d eis.docx](#)

Submitting my husband's letter attached below.

November 4, 2019

Mr. Ian Hirokawa
Board of Land and Natural Resource
1151 Punchbowl Street
Honolulu, HI 96813
Email also: ian.c.hirokawa@hawaii.gov

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 So. Beretania St., Ste 400
Honolulu, HI 96826
Email also: waterleaseeis@wilsonokamoto.com

Re: Comments on the A & B Water Lease Draft EIS

Dear Mr. Hirokawa & Mr. Matsukawa,

I am writing to you on behalf of myself and many other fishermen and gatherers from East Maui who either don't have time or don't have any kind words to say regarding the Draft EIS for the "proposed water lease for Nahiku, Ke'anae, Honomanu and Huelo areas."

My Father and Grandfather were fishing practitioners from East Maui. My Father taught us how to fish in the ocean. My Mother is a gatherer of opihi, limu, kupe'e, hihiwai and opae, like her parents taught them and they have taught us, now finally with the Opae, hihiwai & o'opu returning.

I am also writing to ask for an extension because by the time this 2700+ page draft eis reached Hana Library, almost 3 weeks had gone by. This may make most peoples comments seem like we're not addressing something because you may or may not have addressed it in another chapter.

However, the parts that I did read earlier in the book didn't address and please address this:

1. How will you address DHHL (Department of Hawaiian Home Lands) water needs in the future? Keanae and Hana has Hawaiian Home Lands and are planning to use them soon for 200 plus young families who need a place to live. Many are living with Parents or Grandparents.
2. What about Upper Nahiku? They are mostly on water catchment and some have mentioned not being able to maintain their water line soon due to age. There are many who can use County water or just water from their own streams.
3. When Hana builds more homes, taro patches, farms, there really should be water available from these streams or wells for the future of Hana. East Maui water should feed East Maui people first and foremost. You have no future plans to sustain East Maui in the future. Some families are moving, or thinking about moving home due to the fires in CA and other contiguous states.
4. It is not natural for water from rivers to cross lands horizontally. What should be done is letting the water go through its natural cycle to the ocean so all animal/sea life & river life can live and grow and sustain people.

Letter to Ian Hirokawa, BLNR & Earl Matsukawa, WOC
East Maui Water lease draft eis – Page 2

5. Nowhere in the pages I was allowed to read in the short time allowed, did I see how the lack of water will affect Hana people. Hana still lives as the old days and with cost of living so high, rely on the ocean and streams to subsist their way of life. People here still rely on fishing, hunting and gathering in streams and the ocean. It's a way of life to survive the high cost of living here. The akule has returned since some streams were returned. Fish ponds are flourishing. Muliwai have more fish spawning. These fish migrate and their reaches are far. Hana people also gather opae, o'opu and hihiwai. Even though you mention speaking to Hana people, you never mention this. **THE MOKU OF HANA RELY ON THESE STREAMS RUNNING TO THE OCEAN AND BEING ABLE TO GATHER FOOD FROM THE RIVERS. WE ALSO HAVE WATERCRESS PATCHES HERE AND THERE THAT RELY ON THE STREAMS.**
6. We truly feel that the water should not be taken from East Maui, at least not with full consultation with the people of East Maui, who is your public, who the State is supposed to take care of. Please look it up in the Public trust doctrine.
7. Mahi Pono does not have a clear enough farm plan to warrant taking any water yet. The acreage it is farming is minimal and a normal water meter can feed enough water to the plants. I'm sure A & B didn't get rid of all of their water meters. Until such time as they show that there is a need for more, no water should be taken. We are all for farming and feeding our own people, but hear that most of the farmed food will be exported. Why, when we import over 80% of our produce? It makes no sense at all.
8. The lease, if any, should not run longer than 5 years. That gives them enough time to prove themselves, not more.

I hope you will take into consideration that what you are doing is ruining our way of life and killing our stream life and ocean sea food that we rely on to subsist our living and way of life in our remote town. We live and barter (exchange) food like the Hawaiians did in the old Ahupua'a system. Please reconsider.

Sincerely,

Earle Kuikahi Medeiros
Hana Resident
P.O. Box 215,
Hana, HI 96713
(808)248-8606
(808)633-1022



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Earle Medeiros
P.O Box 215
Hana, HI 96713

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Medeiros:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am writing to you on behalf of myself and many other fishermen and gatherers from East Maui who either don't have time or don't have any kind words to say regarding the Draft EIS for the "proposed water lease for Nahiku, Ke'anae, Honomanu and Huelo areas."*

My Father and Grandfather were fishing practitioners from East Maui. My Father taught us how to fish in the ocean. My Mother is a gatherer of opihi, limu, kupe'e, hihiwai and opae, like her parents taught them and they have taught us, now finally with the Opae, hihiwai & o'opu returning.

Response 1: We acknowledge your comments and understand that you are making comments on behalf of yourself as well as other fisherman and gatherers from East Maui who do not have time or any kind words regarding the Draft EIS. We also acknowledge your comment that opae, hihiwai and o'opu are returning. Please note that the updated Cultural Impact Assessment (CIA), Appendix F to the EIS, also notes that several commenters to the Draft EIS stated that they have observed an increase in fish returning to the nearshore coastal environments since the cessation of sugarcane operations in 2016. Section 7.5.2 of the CIA has been updated to include information in the analysis of cultural impacts, specifically in the analysis of impacts to

10238-04

Letter to Mr. Earle Medeiros

Page 2 of 20

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freshwater ecosystems, as summarized in Section 4.6 of the EIS. See pages 4-239 to 4-252 of the Final EIS. Any noticeable population increases of these stream species could be a result of less or, in some cases, no water being diverted from certain streams since sugar cultivation ceased in late 2016. However, it could also suggest that diverted streams may be benefitting from increased flows as a result of amended Interim Instream Flow Standards (IIFS) being implemented pursuant to the Commission on Water Resources Management (CWRM) Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O). Section 1.3.4 of the Draft EIS discusses CWRM D&O, its objectives, and the amended IIFS established for many streams in the License Area. Notably, the CWRM D&O ordered full restoration of 10 streams that were identified as valuable for traditional taro farming. The CWRM D&O also ordered partial restoration of several other streams in the License Area for habitat or biological purposes.

With respect to native stream species, Section 4.2.1 of the Draft EIS discusses the impacts that the Proposed Action (i.e., issuance of the long-term Water Lease) would have on native stream species, including opae, hīhīwai & ‘o‘opu, based on analysis in the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report provided as Appendix A of the EIS. Please note that Appendix A has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals’ habitats as summarized in Section 4.2.1 of the EIS. See pages 4-56 to 4-67 of the Final EIS. Under the Proposed Action, habitat units (HU) are expected to increase compared to historical diversion rates during sugarcane operations. However, as stated in Section 4.2.1 of the EIS, habitat units would decrease by approximately 36.1% when compared to a theoretical natural flow scenario where no water was diverted from the License Area (which is theoretical because even under the No Water Lease scenario, the EMI Aqueduct System would continue to divert 30% of the water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS requirements).

With respect to the nearshore coastal environment, Section 4.2.3 of the Draft EIS discusses the impacts the Proposed Action would have on coastal waters and nearshore environments based on the analysis in the East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry report provided as Appendix B of the EIS. As discussed in Section 4.2.3 of the EIS, the Proposed Action is not anticipated to have significant adverse impacts to the nearshore environment due to the intense mixing processes that occur the nearshore ocean in East Maui. Thus, because the nutrient concentrations in the ocean do not change substantially due to stream diversions as proposed under the Water Lease, there is no pathway for fishing to be negatively impacted.

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Moreover, within the HSHEP model, estuarine reaches are defined as stream segments occurring below the one-meter elevation. Section 4.2.3 of the Final EIS has been revised to show that under these parameters, there are very little estuarine habitats present in the East Maui due to the steep terrain of the streams that flow from the License Area as shown in the pages 4-78 to 4-83.

Comment 2: *I am also writing to ask for an extension because by the time this 2700+ page draft eis reached Hana Library, almost 3 weeks had gone by. This may make most peoples comments seem like we're not addressing something because you may or may not have addressed it in another chapter.*

Response 2: Please note that there is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comments were received during the statutory comment period.

Regarding your comment about the Draft EIS being received by Hāna Public Library after publication, we originally sent one hard copy to the Wailuku Public Library as that is the most centralized location between East Maui, Upcountry Maui, and Central Maui. However, at the request of a County councilmember, two more hard copies were sent out; one to the Hāna Public Library and one to Maui County Council Office. Moreover, please note that pursuant to HAR § 11-200-21 a distribution list of reviewers needed to be approved by the State of Hawai'i Office of Environmental Quality Control (OEQC), which notified the reviewers of the availability of the Draft EIS. The distribution list included Federal, State, and County agencies, list of depositories, as well as organizations and individuals (who provided addresses) that participated in the early consultation and EIS Preparation Notice (EISPN) scoping meetings and commented on the EISPN. This list was provided as Table 9-2 in the Draft EIS. Hence, the Draft EIS was distributed in compliance with the required State process.

Comment 3: *However, the parts that I did read earlier in the book didn't address and please address this:*

How will you address DHHL (Department of Hawaiian Home Lands) water needs in the future? Keanae and Hana has Hawaiian Home Lands and are planning to use them soon for 200 plus young families who need a place to live. Many are living with Parents or Grandparents.

Response 3: The Draft EIS acknowledged the Department of Hawaiian Home Lands' (DHHL) plans in Ke'anae and the fact that DHHL has the right to seek a reservation of water. Section 2.1.1 of the Draft EIS states that:

The DHHL has previously secured from the CWRM the following reservations of groundwater:

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- 3,000 gpd for Ke‘anae-Wailuānui
- 813,000 gpd for Kēōkea-Waiohuli
- 1,734,000 gpd for Pulehunui

Non-potable water needs for the DHHL’s lands in Ke‘anae-Wailuānui amount to 6,868,000 gpd. Although the DHHL holds a reservation for 3,000 gpd of potable water for this area for development over the next 20 years, another 7,000 gpd of potable water may be required for longer-term development. Thus, a potential reservation for this area amounts to 6,875,000 gpd. Ke‘anae is fed by Pi‘ina‘au and Palauhulu Streams; Wailuānui is fed by Wailuānui and Waiokomilo Streams. These four streams are, or will soon be, fully restored. The proposed Water Lease, therefore, would not be affected by such reservations of water for the DHHL.

DHHL lands in Hāna should not be impacted by the proposed Water Lease as the EMI Aqueduct System does not divert streams in the Hāna area. Makapiipi Stream marks the furthestmost eastern stream diverted by the EMI Aqueduct System.

Specific information regarding DHHL future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL’s Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd, as shown in pages 2-4 to 2-7. As explained in pages

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2-4 to 2-7 of the Final EIS, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water by CWRM, CWRM could act on a reservation request related to a proposed lease. As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the DLNR's Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

Section 2.1.1 of the Draft EIS stated, with respect to the DHHL reservation, that "*Until that reservation is physically claimed, however, it will be available for use by the lessee.*" That statement has been clarified in the Final EIS as shown in pages 2-4 to 2-7, as it is uncertain whether the DHHL reservation amount would be available to the lessee until such time as it is needed by DHHL. Such temporary uses of the DHHL reservation water are not addressed under Hawai'i Revised Statutes (HRS) § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

Comment 4: *What about Upper Nahiku? They are mostly on water catchment and some have mentioned not being able to maintain their water line soon due to age. There are many who can use County water or just water from their own streams.*

Response 4: Please note, the description of the Nāhiku water service in Section 2.1.3.3 of the Draft EIS has been revised to take into account clarifications from the County of Maui Department of Water Supply (MDWS), as shown in pages 2-21 to 2-22 of the Final EIS.

According to MDWS, EMI's West Makapipi Tunnel (Well No. 4806-07) (also known as the Nāhiku Tunnel) is the sole source of water for the MDWS Nāhiku Water Service Area. EMI developed and owns this development tunnel that is the source of the water and the Nāhiku Tunnel sources water from lands owned by EMI. Per a 1973 Memorandum of Understanding

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with EMI and HC&S as amended, MDWS is able to draw up to 20,000 gallons of water per twenty-four hour day from the Nāhiku Tunnel to serve the Nāhiku community . Deliveries for the Nāhiku community have ranged between 8,345 (2018) to 40,925 (2007) gpd on an average daily basis (MDWS 2007-2018). EMI continues to deliver water to the Nāhiku community pursuant to an agreement that is premised upon EMI's continued receipt of water permits or a lease from the State BLNR. It is our understanding that the water serves 43 water meters located along Nāhiku Road below the Hāna Highway. One meter is classified as an agricultural use while all the others are classified as single-family use. According to the Draft Maui Island Water Use and Development Plan (March 2019, Updated July 2020), there is sufficient source to accept new meter service applications to meet future demands below the highway. However, the cost for water service, storage, and transmission would be borne by the meter applicant. Under the Proposed Action, this portion of Nāhiku would continue to receive water sourced from the Nāhiku Tunnel.

The portion of the Nāhiku community above Hāna Highway is not served by MDWS because there is insufficient difference in elevation between the Upper Nāhiku Tank and the residences to have adequate water pressure. In order to serve the community above Hāna Highway, MDWS would need to build a new reservoir at a higher elevation and a new pump, transmission line(s), and disinfection system would be required to service that reservoir. Also, a new distribution system of pipes from the reservoir to residences will be required. However, it is our understanding that MDWS has not proposed building such a system.

Comment 5: *When Hana builds more homes, taro patches, farms, there really should be water available from these streams or wells for the future of Hana. East Maui water should feed East Maui people first and foremost. You have no future plans to sustain East Maui in the future. Some families are moving, or thinking about moving home due to the fires in CA and other contiguous states.*

Response 5: Please note that none of the streams proposed for diversion under the Proposed Action (i.e., the East Maui streams listed in Section 1.3.4 of the Draft EIS), are situated in the Hāna area. Further, the EMI Aqueduct System does not extend to Hāna thus it cannot supply water to Hana, nor does the MDWS Upcountry Maui Water System (which is partially supplied by the EMI Aqueduct System) service Hāna. Hence, the Hāna region is not subject to assessment under the scope of this EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The Water Lease, which will be awarded by public auction, will enable the lessee to

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enter upon State lands to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System for the delivery of water.

Regarding your comment about plans to sustain East Maui in the future, it is unclear what is specifically meant by this comment. However, as discussed in the EIS, HRS § 171-58(e) requires a watershed management plan in connection with a water lease. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically address identifying priority outcomes essential to maintain or restore biological integrity of the watershed. The goals of watershed management plans are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4.

Regarding your comment about feeding "East Maui people first and foremost", the IIFS established by the CWRM D&O returned a significant amount of water to East Maui streams, reducing the amount of water that can be diverted out of East Maui to almost half of what was being diverted when sugar was in cultivation. As a proposed use of this water, as described in the EIS, the Mahi Pono farm plan is anticipated to produce a significant amount of food for both local consumption and export, generating significant beneficial economic and fiscal impacts, providing numerous direct and indirect jobs, and State and County tax revenues that will benefit the people of Maui and the State generally, including East Maui residents.

Your comment that some people living in California and other states are thinking of moving home due to fires is acknowledged. As discussed in Section 4.7.1 of the EIS, the population of East Maui is expected to increase by 3.6% to 12,321 by the year 2035.

It is also noted that under the CWRM D&O, streams in East Maui identified for taro growing and community use were fully restored and will have no diversions. Furthermore, additional streams were ordered to have limited diversions to restore and increase habitat within the License Area.

Comment 6: *It is not natural for water from rivers to cross lands horizontally. What should be done is letting the water go through its natural cycle to the ocean so all animal/sea life & river life can live and grow and sustain people.*

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Response 6: Your comments about the natural flow of water are acknowledged. It is generally known that flow from mountain to ocean can provide environmental benefits. The Proposed Action also provides environmental benefits and supports important priorities for the State, such as supporting local agriculture and food sustainability. As discussed in Section 5.1.4 of the EIS, the Proposed Action will support farming on the Central Maui agricultural lands owned by Mahi Pono, a majority of which have been designated as Important Agricultural Lands by the State of Hawai'i Land Use Commission and all of which are suitable for agricultural uses.

As discussed in Response #1 above, the HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat and to assist decision makers determine an appropriate balance between instream and offstream water uses. Based on the analysis provided by the HSHEP model, impacts to stream habitats and native amphidromous stream species are summarized in Section 4.2.1 of the EIS. Impacts to coastal waters and nearshore environments are summarized in Section 4.2.3 based upon the technical study that was included as Appendix B. Impacts to terrestrial flora and fauna, including threatened and endangered species, are summarized in Section 4.4 of the EIS based upon the technical study that was provided as Appendix C, and which has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS, as shown in pages 4-121 to 4-124 and pages 4-129 to 4-131.

Specifically, as it relates to impacts of flow restoration on native stream animal habitat, it is expected that the Proposed Action will decrease the total potential habitat units (HU) available for native stream species in the License Area to approximately 63.9%, which would theoretically exist under the Natural Flow (no diversion) scenario. However, please note that this has not existed for over a century. The simplest way to mitigate these impacts is to restore more stream flow. As it relates to impacts caused by diversions structures, note that diversion structures come in many shapes and sizes and some do not have the potential to cause significant impacts. Some diversions do have the potential to cause the impacts such as blocking a species migration upstream, entrainment of larvae, and facilitation of mosquito breeding in certain circumstances. As it specifically pertains to native species habitat: as long as the diversion does not divert water, change the natural channel pathway, create a barrier, and impound water, then the impacts will be limited as discussed in Appendix A. However, this needs to be assessed and evaluated on a case-by-case basis. CWRM will be looking at how specific diversions should be modified in the course of overseeing the implementation of its CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O for the Interim Instream Flow Standards (IIFS) proceedings on the East Maui streams. CWRM ordered in relevant part:

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

See CWRM D&O at p. 269.

Moreover, CWRM took aesthetic values and recreational activities into account when setting the IIFS. This is reflected in Findings of Fact (FOF) made by CWRM in the CWRM D&O as follows:

70. *When setting IIFS, the information that is considered in connection with aesthetic values such as waterfalls and scenic waterways is the presence of scenic views, waterfalls and whether there is tourism in the area.*

and

71. *Aesthetics is a multi-sensory experience related to an individual's perception of beauty. As a subjective value, aesthetics cannot be quantitatively determined. Elements, such as waterfalls and cascading plunge pools that appeal to an observer's visual and auditory senses.*

CWRM D&O, FOF 70, 71.

Numerous other FOF addressed the aesthetic values of the specific streams. With respect to recreational matters, CWRM found:

66. *When setting IIFS, the information that is considered in connection with the instream use of outdoor recreation activities is the presence of opportunities for swimming, nature study, fishing, boating, and parks.*

CWRM D&O, FOF 66.

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67. *Streams are often utilized for water-based activities such as boating, fishing, and swimming, while offering added value to land-based activities such as camping, hiking, and hunting.*

CWRM D&O, FOF 67.

Please note that the diversions closer to the stream mouth have more impact than those farther from the stream mouth, some designs can entrain larvae or block passage more than other designs, and the amount of water passing is also important when quantifying impacts. The *Assessment of the Environmental Impact of Stream Diversions on 33 East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model* (May 27, 2019) prepared by Trutta Environmental Solutions, Inc. addresses all of these factors on a diversion by diversion basis.

The section entitled, “Diversion Assessments” of Appendix A of the EIS regarding the HSHEP model provides that entrainment is directly related to the proportion of water removed by a diversion. Section 4.2.1 of the Draft EIS discuss how both diversion structures themselves and the taking of water from streams can lead to entrainment, decreasing potential HU.

However, generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As mentioned above and discussed in Appendix A, as long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best.

Conversely, meeting the IIFS at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

For example, Diversion K-15 on West Kopili‘ula Stream was closed with 100% of the water flowing through the bypass and continuing downstream (See Figure 12 of Appendix A of the EIS). However, the physical diversion structure was still present. Immediately upstream of this diversion, numerous native stream animals were observed. 409 ‘ōpae kala‘ole (*Atyioda bisulcata*) and 5 ‘o‘opu alamo‘o (*Lentipes concolor*) were counted in the stream above the diversion in less than 200 m² of habitat sampled for the study included as Appendix A. Even though the physical diversion structure still exists, the stream flowed downstream uninterrupted

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and no entrainment or barrier to movement is present. The native stream animals observed were using the habitat immediately upstream of the diversion. Because these animals climb upstream from the ocean, this shows that the physical diversion structure did not prevent the animals from using the area. This being said, if the diversion structure was partially removed to make sure that the bypass opening would not be blocked by debris, then it would almost guarantee that this physical structure would continue to have no or very minor impact on native stream species habitat. Please note that Section 4.2.1 of the Final EIS has been updated to include an expanded discussion regarding stream habitat and native species impacts related to entrainment as shown in pages 4-61 to 4-67.

In summary, altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns. In summary, diversions come in many configurations and sizes, and will have to be assessed individually. However, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat. Exact structure modification will need to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts. Also note that the physical act of removing diversion structures could generate adverse impacts in certain circumstances that would not occur if the structures were left in place.

Specifically, as it relates to sea life and the nearshore coastal environment, as discussed in Response #1 above, Section 4.2.3 of the Draft EIS discusses the impacts the Proposed Action would have on coastal waters and nearshore environments based on the analysis in the East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry report provided as Appendix B of the EIS. As discussed in Section 4.2.3 of the EIS, the Proposed Action is not anticipated to have significant adverse impacts to the nearshore environment due to the intense mixing processes that occur the nearshore ocean in East Maui. Thus, because the nutrient concentrations in the ocean do not change substantially due to stream diversions as proposed under the Water Lease, there is no pathway for fishing to be negatively impacted. Moreover, Section 4.2.3 has been updated to show that there is very little estuarine environment within East Maui below the streams being diverted as shown in pages 4-78 to 4-83.

Specifically, as it relates terrestrial flora and fauna, Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS that was prepared by SWCA included a survey of approximately

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33,000 acres of land in East Maui referred to in the SWCA report as the “License Area” and approximately 30,000 acres of agricultural land in Central Maui that it referred to as the “Service Area.” These areas were collectively referred to as the “Study Area” throughout the SWCA report. Appendix C of the Draft EIS specifically addresses the flora and fauna considerations of the Proposed Action and alternatives. To minimize the impacts to flora and fauna in the License Area, Section 7 of Appendix C identifies several avoidance and minimization measures, including measures to avoid the introduction of additional invasive species to the License Area, which is harmful to the watershed and to native flora which are also reflected in Section 4.4 of the EIS. Please note that Appendix C and Section 4.4 of the Final EIS has been updated as shown in pages 4-121 to 4-124 and pages 4-129 to 4-131 to discuss how the Proposed Action would potentially impact the flora and fauna within the License Area on a watershed by watershed basis, using data produced by the HSHEP model and HIGAP data provided by state, along with surveys conducted within the region.

Comment 7: *Nowhere in the pages I was allowed to read in the short time allowed, did I see how the lack of water will affect Hana people. Hana still lives as the old days and with cost of living so high, rely on the ocean and streams to subsist their way of life. People here still rely on fishing, hunting and gathering In streams and the ocean. It’s a way of life to survive the high cost of living here. The akule has returned since some streams were returned. Fish ponds are flourishing. Muliwai have more fish spawning. These fish migrate and their reaches are far. Hana people also gather opae, o’opu and hihiwai. Even though you mention speaking to Hana people, you never mention this. THE MOKU OF HANA RELY ON THESE STREAMS RUNNING TO THE OCEAN AND BEING ABLE TO GATHER FOOD FROM THE RIVERS. WE ALSO HAVE WATERCRESS PATCHES HERE AND THERE THAT RELY ON THE STREAMS.*

Response 7: As mentioned previously, please note that none of the streams proposed for diversion under the Proposed Action (i.e., the East Maui streams listed in Section 1.3.4 of the Draft EIS), are situated in the Hāna region. None of the streams diverted by the EMI Aqueduct System are within the Hāna region, nor does the MDWS Upcountry Maui Water System (which is partially supplied by the EMI Aqueduct System) service Hāna. Therefore, to that extent, the Hāna region would not be affected by the Proposed Action as discussed in the Draft EIS. This includes subsistence gathering activities in undiverted streams as well as any watercress patches drawing water from those streams.

The Social Impact Assessment (SIA) provided as Appendix G to the EIS covered a study area, which is described in SIA Section 2.1.2, that included geographic regions that are directly affected by the Proposed Action. The study area included portions of the Hāna and Makawao

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Districts. In the Hāna District, the Ke‘anae, Wailuānui and Nāhiku communities were included because they are situated below the Ke‘anae and Nāhiku portions of the License Area. Hāna Town, as represented in the Hāna Census Designated Place, or CDP, was not a focus because it is located outside of the License Area.

To the extent that you are discussing gathering activities in streams west of the Hāna region that were diverted by the EMI Aqueduct System, it is likely that there has been a greater abundance of species such as hīhīwai, opae and ‘o‘opu after the amount of water diverted was reduced with the end of sugar cultivation in Central Maui and pursuant to the CWRM D&O.

Your comment that akule have returned since some East Maui streams were restored is acknowledged, but if you are referring to streams in Hāna, a causal relationship is unlikely since the EMI Aqueduct System does not, and never has, diverted streams in Hāna. A stream and ocean water chemistry assessment was conducted by Sea Engineering, Inc. (SE) and Marine Research Consultants, Inc. (MRC) in 2018 (See Appendix B). The study concluded that the effects of stream water on marine waters is minor in these habitats, due to the physical processes associated with a relatively small input of stream water to the vastly larger ocean environment with continual wave energy and intense mixing. Thus, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species (‘O‘opu naniha (*Stenogobius hawaiiensis*), ‘O‘opu akupa (*Eleotris sandvicensis*) and ‘Ōpae ‘oeha‘a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi‘ina‘au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa‘akea will have connectivity flow restoration, while ‘O‘opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

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The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83.

Regarding your comment about reliance on streams and the ocean for subsistence, the Cultural Impact Assessment (CIA), and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action as shown in pages 4-171 to 4-239. Tables 14, 15 and 16 of the CIA (Appendix F to the EIS) inventory the cultural practices and resources identified through the EIS process.

Comment 8: *We truly feel that the water should not be taken from East Maui, at least not with full consultation with the people of East Maui, who is your public, who the State is supposed to take care of. Please look it up in the Public trust doctrine.*

Response 8: We acknowledge your comments. Please note that community consultation has been undertaken in connection with the preparation of the EIS. Chapter 9 of the EIS details the consultation efforts for the EIS, which started in November 2016. Furthermore, the SIA provided as Draft EIS Appendix G and summarized in Section 4.7.2 of the Draft EIS, included

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input from several East Maui residents and farmers. As discussed in SIA Section 4 (Preliminary Community Issues), as well as Section 4.7.3 of the Draft EIS, seven focus groups were convened in November 2018 and on November 16, 2018, a focus group was held with residents, farmers and cultural practitioners from Ke‘anae and Wailuānui. The concerns you raised were articulated in these meetings, and are presented and analyzed in Section 4 of Appendix G, and Section 4.7.2 of the Draft EIS.

Moreover, the CIA provided as Draft EIS Appendix F, includes input from three interviewees, as well as numerous declarations made during the CWRM D&O proceedings. Also, based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, pages 4-158 to 4-159.

Regarding water being a public trust, we acknowledge that the Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai‘i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B’s 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action as shown in pages 1-25 to 1-27.

Comment 9: *Mahi Pono does not have a clear enough farm plan to warrant taking any water yet. The acreage it is farming is minimal and a normal water meter can feed enough water to the plants. I’m sure A & B didn’t get rid of all of their water meters. Until such time as they show that there is a need for more, no water should be taken. We are all for farming and feeding our own people, but hear that most of the farmed food will be exported. Why, when we import over 80% of our produce? It makes no sense at all.*

Response 9: Mahi Pono has developed a farm plan that makes productive use of the approximately 30,000 acres of privately owned agricultural land in Central Maui. Please note as discussed in Section 2.1.4 of the Draft EIS that that the Mahi Pono farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding

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to other variables such as the availability and cost of water for crop irrigation, which includes the DHHL water reservation. At present, over one-third of the land planned for crop farming is planted or is being prepared for planting. Section 2.1.4 of the Final EIS has been revised to reflect Mahi Pono's current and near-term expected water use as shown in pages 2-30 and 2-32 which details average water being diverted from East Maui streams through the EMI Aqueduct System for use in Upcountry Maui and use by Mahi Pono and Central Maui lessees for agricultural, reservoir, system losses, dust control, industrial, hydroelectric, and fire suppression needs, as well as projections of acreage to be in cultivation by the end of calendar year 2021. As of October 2020, approximately 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. It important to note that as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

At full build-out of the Mahi Pono Farm Plan, about 15,950 acres will be in crop, including: 800 acres in community farms; 12,850 acres in orchard crops (lemons, limes, mandarins, oranges, macadamia nuts, coffee, avocados, etc.); 600 acres in tropical fruits (dragon fruit, guava, lilikoi, papaya, white pineapple, etc.); 1,200 acres in row crops and annual crops (potatoes, etc.), and 500 acres in energy crops. In addition, about 13,800 acres will be used for grazing cattle, including about 4,700 of irrigated pasture and 9,100 acres of unirrigated pasture. Finally, about 250 acres will be used for one or more solar farms.

Table 2-1 presented in the Draft EIS is based upon the findings from Appendix I within the EIS. The calculations of future water requirements at full build-out (year 2030) are presented in Table 3 of Draft EIS Appendix I, "East Maui Water Lease: Agricultural and Related Economic Impacts". The per-acre water requirements used in the calculations are based on published crop studies, farming experience with specific crops, and evapotranspiration rates for Central Maui. Please note, Draft EIS Table 2-1 has been slightly revised to address rounding errors, and is now provided as Final EIS Table 2-2, which is provided on page 2-29.

In response to your comment about water meters, please note that the Central Maui agricultural fields are not and have never been irrigated with metered water (i.e., water from the MDWS). Rather, the agricultural fields are irrigated with surface water from the EMI Aqueduct System, supplemented with brackish groundwater from Central Maui wells that are owned by Mahi Pono.

Regarding your comment that 80% of the produce in Hawai'i comes from exports, as explained in Appendix I of the Final EIS, "Currently, Hawai'i farmers use about 15,000 acres to supply about

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one-third of the fresh fruits, vegetables and melons consumed in Hawai'i (this does not include nuts or coffee). Self-sufficiency is low because of low-cost imports from the mainland." Please note that this has been added to the Final EIS in Section 4.7.4 as shown on page 4-303. In other words, over 65% of the produce consumed in Hawai'i is imported. To the extent economically feasible, Mahi Pono will grow food crops for the Hawai'i market, thereby reducing reliance on these imports. At full development of the farm plan, assuming issuance of the Water Lease consistent with the Proposed Action, Mahi Pono's farm sales would be predominately to the local market, with an estimated \$104.4 million (65%) in sales being Hawai'i sales, and \$56.2 million (35%) being export sales. Local sales are preferred over exports because it saves on overseas shipping costs. Both local sales and exports are beneficial to Hawai'i: local sales that displace imports reduce the financial drain on the State as a whole, while exports generate income for the State.

Comment 10: *The lease, if any, should not run longer than 5 years. That gives them enough time to prove themselves, not more.*

Response 10: Please note that an alternative duration for the subject lease is discussed and evaluated within Section 3.2.2.1 of the Draft EIS and throughout Section 3.4 of the Draft EIS. The Applicant requested that the BLNR consider the issuance of a long-term (30-year) water lease. However, it is acknowledged that the BLNR has the authority to offer a water lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. As discussed in Section 3.2.2.1 of the Draft EIS:

Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

Moreover, as discussed in Section 4 of Appendix I of the Draft EIS (East Maui Water Lease: Agricultural and Related Economic Impacts) of the EIS, and as summarized in EIS Section 2.1.5, a long-term Water Lease is important for the viability of diversified agriculture in Central Maui.

An estimated 10 years will be required for Mahi Pono and lessees to remove volunteer (i.e., rogue) sugarcane and weeds from 30,000 acres, amend soils, install

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field improvements (e.g., irrigation systems, fencing, etc.), build warehouses and other structures), and plant crops.

In addition, about 5 years or more will be required for avocado, citrus and coffee trees to reach full maturity, and 12 years or more for macadamia nuts. After reaching maturity, macadamia nuts trees will provide yields for 35 years or more, citrus and coffee for 50 years or more, and avocado for over 100 years.

In order for Mahi Pono and other farmers to justify the very substantial investment in a 30,000-acre farm, a long-term water lease will be required. A short-term lease would derail development of the Mahi Pono Farm Plan—or any long term agricultural use of the Central Maui fields including any plan to convert the Central Maui lands to diversified agriculture—because of the risk of not being able to farm for a long enough period to recover their planned investment.

Consequently, a shorter lease term would not be feasible nor conducive to achieving the objectives of the Proposed Action as set forth in Section 1.2 of the Draft EIS.

Comment 11: *I hope you will take into consideration that what you are doing is ruining our way of life and killing our stream life and ocean sea food that we rely on to subsist our living and way of life in our remote town. We live and barter (exchange) food like the Hawaiians did in the old Ahupua'a system. Please reconsider.*

Response 11: Your comments have been acknowledged. Please note that the EIS does not authorize anything. The subject EIS is a disclosure and informational document prepared to disclose the effects of the Proposed Action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed Water Lease, measures proposed to minimize adverse effects, and alternatives to the proposed Water Lease and their environmental effects. In this case, the Proposed Action is for a 30-year Water Lease from the State. The Draft EIS adequately discusses the impacts of the Proposed Action both in terms of the effects on the environment, including the impacts on traditional and customary Native Hawaiian practices, as well as the social context of the impacted communities.

Specifically, in terms of habitat, Appendix A and Section 4.2.1 of the Draft EIS presented the HSHEP model that was used to quantify the impacts of flow restoration on native stream animal habitat to determine an appropriate balance between instream and offstream water uses. Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Impacts to terrestrial flora and fauna, including threatened and endangered species, are

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analyzed in Section 4.4 and Appendix C of the EIS. As it relates to traditional and customary resources and practices, please note that CSH provides a detailed and comprehensive report accounting the history of East Maui. This report is included in Appendix E and summarized in Section 4.5 of the EIS. The EIS includes an assessment of effects on the cultural practices through the CIA provided as Appendix F. The SIA (Appendix G) provides history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono based on focus group meetings as summarized in Section 4.7.2 of the EIS. The SIA has been updated to include a discussion relating the cumulative social impacts which is included in Section 4.7.2 of the Final EIS as shown on pages 4-262 to 4-265.

In summary, the Proposed Action is expected to result in less environmental impacts than what occurred over the past century during sugarcane operations in Central Maui. Moreover, the Proposed Action must comply with the CWRM D&O, which resulted in numerous streams being fully restored for community use and taro cultivation, as well as many other streams being partially restored for habitat restoration and mauka-makai connectivity as explained in Section 1.3.4 of the Draft EIS, before any water can be diverted by the EMI Aqueduct System. Moreover, as a proposed use of this water, as described in the EIS, the Mahi Pono farm plan is anticipated to produce a significant amount of food for both local consumption and export, generating significant beneficial economic and fiscal impacts, providing numerous direct and indirect jobs, and State and County tax revenues that will benefit the people of Maui and the State generally, including East Maui residents.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: [Elizabeth Hueu](#)
To: [Public Comment](#)
Subject: Draft EIS
Date: Wednesday, October 30, 2019 5:33:43 PM

Dear Mr. Earl Matsukawa,

My daughter-in-law just posted an article by MauiTime, Mahi Pono is Coming for Our Water. In the article, it was stated that there is a draft EIS for the 30-year lease of A&B/East Maui Irrigation ditches and use of the water which flows from the East End of Maui to the Central Plain.

My understanding is that the Draft was made available on September 23, 2019. And comments will be received until November 7, 2019.

My husband is a landowner in East Maui, and I would be interested in reading the DEIS.

Could you help me find where I can read the Draft EIS? Is it online? Is it available at the public library? Is it available at your office? Or at the offices of the Board of Land and Natural Resources?

Thank you for your assistance in this matter.

Respectfully,

Elizabeth Hueu

Sent from my iPhone

From: Public Comment
To: "Elizabeth Hueu"; [Public Comment](#)
Subject: RE: Draft EIS
Date: Thursday, October 31, 2019 9:04:00 AM

Hi Elizabeth Hueu:

The Draft EIS was published on September 23, 2019 in the Office of Environmental Quality Control's Environmental Notice. The 45-day comment period ends on November 7, 2019. The Draft EIS is available online in the link below:

http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2019-09-23-MA-DEIS-East-Maui-Water-Lease.pdf

Hardcopies of the Draft EIS are located at the Kahului Regional Library, Hawaii State Library, Hana Public Library, Hana County Council Office, and the Wailuku County Council Office.

Thank you,
Wilson Okamoto Corporation

1907 South Beretania Street, Suite 400
Honolulu, Hawaii 96826
T (808) 946-2277 F (808) 946-2253
W <http://www.wilsonokamoto.com>

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

From: Elizabeth Hueu [<mailto:ehueu22@gmail.com>]
Sent: Wednesday, October 30, 2019 5:34 PM
To: Public Comment <publiccomment@wilsonokamoto.com>
Subject: Draft EIS

Dear Mr. Earl Matsukawa,

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Thank you for your assistance in this matter.

Respectfully,

Elizabeth Hueu

Sent from my iPhone



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September 3, 2021

Ms. Elizabeth Hueu
Ehueu22@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Hueu:

Thank you for comments dated October 31, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *My daughter-in-law just posted an article by MauiTime, Mahi Pono is Coming for Our Water. In the article, it was stated that there is a draft EIS for the 30-year lease of A&B/East Maui Irrigation ditches and use of the water which flows from the East End of Maui to the Central Plain.*

My understanding is that the Draft was made available on September 23, 2019. And comments will be received until November 7, 2019.

My husband is a landowner in East Maui, and I would be interested in reading the DEIS.

Could you help me find where I can read the Draft EIS? Is it online? Is it available at the public library? Is it available at your office? Or at the offices of the Board of Land and Natural Resources?

Thank you for your assistance in this matter.

Response 1: Please note that you were provided with a response that contained information regarding where the electronic and paper copies of the Draft EIS could be found which is shown

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in the reproduction of your email correspondence. Please note that we did not receive any other comment from you.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: [Ember](#)
To: Ian.c.hirokawa@hawaii.gov; [Public Comment](#)
Subject: Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas
Date: Thursday, November 7, 2019 11:59:02 PM

From: Ember Behrendt

To: Ian Hirokawa, Earl Matsukawa

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas

Please accept my comments on the subject DEIS.

I care very deeply about this proposed lease of public water because I am a 13 year resident of Huelo and farming on Ho'olawa. This DEIS has left out many of the most important considerations. A proper EIS must discuss the importance of full stream flow to the ocean and the care of the streams from mauka to makai. Full stream flow is necessary for the habitat of native flora and fauna and it is vitally important for healthy estuaries and near shore ecosystems. These areas are meant to be rich in biodiversity, but through the years of diversion, they did not thrive and the dry streams filled with invasive species. The EIS must discuss the urgency to restore these ecosystems and at the same time return these East Maui lands to their glory, while protecting our most precious resource of all, our wai. Another mistaken point in this DEIS is the idea that Maui's central valley is a good location for water-intensive crops. This is simply ridiculous...because it does not have the water for this on a massive scale. The land itself must be respected and used properly and the watershed cared for so that all the people can enjoy and live from it.

I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.

Aloha,

Ember Behrendt



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Ms. Ember Behrendt
saraemberhawk@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Behrendt:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I care very deeply about this proposed lease of public water because I am a 13 year resident of Huelo and farming on Ho‘olawa.*

Response 1: We acknowledge your comments and understand that you are a 13-year resident of Huelo and have been farming on Ho‘olawa.

Comment 2: *This DEIS has left out many of the most important considerations. A proper EIS must discuss the importance of full stream flow to the ocean and the care of the streams from mauka to makai. Full stream flow is necessary for the habitat of native flora and fauna and it is vitally important for healthy estuaries and near shore ecosystems. These areas are meant to be rich in biodiversity, but through the years of diversion, they did not thrive and the dry streams filled with invasive species.*

Response 2: Please note that it is generally acknowledged that continuous stream flow from the mountain to sea can provide environmental benefits. We also acknowledge that stream flow is necessary for providing habitat units within the License Area. However, full stream flow is not necessary to achieve habitat restoration as discussed in Section 4.2.1 of the Draft EIS and presented using the HSHEP model in Appendix A. The HSHEP model addressed the impacts of

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streamflow diversion on the habitat of native amphidromous stream animals. The model considers changes in habitat, entrainment of animals into the ditch system and barrier to passage from migrating animals. It quantifies these impacts with respect to various flow restoration scenarios. Specifically, Section 4.2.1 of the Draft EIS states:

Under the Full Diversion scenario (diverting 100% of available low flows), less than half of the HUs remained in the License Area; whereas under the CWRM D&O standards, the number of remaining HUs increases to nearly 60%. (Trutta, p. 59-61, 2019)

In other words, compared to historical diversions, under the Proposed Action, it is anticipated that there will be some habitat restoration that occurs within the License Area. We do acknowledge that compared to “Natural Flow” scenarios, or no diversions, total habitat units decrease by approximately 40% as a result of the Proposed Action.

With regards to estuaries and nearshore environments in East Maui, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of

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impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat

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based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83 of the Final EIS.

As it relates to native flora and faunal impacts, the area surrounding the EMI Aqueduct System tends to be composed of “alien forest” which consist of non-native species. Hence, it is anticipated under the “Reduced Water Volume” alternative, which would involve more human activity, that an increase in water flow would likely have little impact on native land-based flora and fauna in the areas where more stream flow would be restored. However, as noted in Section 6.3 of Appendix C in the Final EIS, the impacts would vary on a stream-by-stream basis. Please note that Appendix C has been updated to discuss how the Proposed Action would potentially impact the flora and fauna within the License Area on a watershed-by-watershed basis, using data produced by the HSHEP model and HIGAP data provided by the State, along with surveys conducted within the region. The updates are reflected on Section 4.4 of the Final EIS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Comment 3: *The EIS must discuss the urgency to restore these ecosystems and at the same time return these East Maui lands to their glory, while protecting our most precious resource of all, our wai.*

Response 3: We acknowledge your comments. Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Comment 4: *Another mistaken point in this DEIS is the idea that Maui’s central valley is a good location for water-intensive crops. This is simply ridiculous...because it does not have the water*

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for this on a massive scale. The land itself must be respected and used properly and the watershed cared for so that all the people can enjoy and live from it.

Response 4: We respectfully disagree with your comment. As summarized in Section 4.7.4 and Appendix I, “East Maui Water Lease: Agricultural and Related Economic Impacts”

Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

The basis for this finding is given in Subsection 5.a of Appendix I (pp. 13 to 22), along with Figures 4 to 12 (pp. 70 to 78) in Appendix I.

Without sufficient water to irrigate crops, most of Central Maui would change from green expanses of farmland to fire-prone dry-land grasses. However, since diversified crops require much less water than sugarcane, there is sufficient water to restore many of the streams in East Maui and to grow crops in Central Maui.

However, for Central Maui to reach its agricultural potential, surface water from East Maui will be required to irrigate the Central Maui fields.

Also, O‘ahu farmers have demonstrated that food crops can be grown safely and successfully on former sugarcane lands.

Comment 5: *I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.*

Response 5: We acknowledge your comments and have provided detailed responses to your comments.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beauprez

From: Public Comment
Sent: Tuesday, September 24, 2019 5:05 PM
To: 'Faith Chase'
Subject: RE: East Maui Environmental Impact Statement

Hi Faith:

Thank you for the email. Below is the direct link to the Draft Environmental Impact Statement published in the Office of Environmental Quality Control's *Environmental Notice*.

http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2019-09-23-MA-DEIS-East-Maui-Water-Lease.pdf



1907 South Beretania Street, Suite 400
Honolulu, Hawaii 96826
T (808) 946-2277 F (808) 946-2253
W <http://www.wilsonokamoto.com>

This message contains information that might be confidential and privileged. Unless you are the addressee or are authorized by the sender, you may not use, copy or disclose the information contained in this message. If you have received this message in error, please delete it and advise the sender.

From: Faith Chase [mailto:mauifaith@gmail.com]
Sent: Tuesday, September 24, 2019 3:12 PM
To: Public Comment <publiccomment@wilsonokamoto.com>
Subject: East Maui Environmental Impact Statement

Aloha,

May I please be directed to where the entire East Maui Water EIS may be posted or if need to be emailed, please email me the document.

Mahalo, Faith Chase



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Ms. Faith Chase
mauifaith@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Chase:

Thank you for comments dated September 24, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *May I please be directed to where the entire East Maui Water EIS may be posted or if need to be emailed, please email me the document.*

Response 1: Please note that you were provided with a response directing you to where an electronic copy of the Draft EIS could be reviewed included in the reproduction of your email. Please note that we did not receive any more comments from you.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC’s website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

Dalton Beauprez

From: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Sent: Thursday, November 7, 2019 9:35 AM
To: Public Comment
Subject: FW: Do not approve KIUC's long-term lease for diversions to Waiahi Hydropower Facility

From: Koa 'Ohana <mauifay@me.com>
Sent: Thursday, November 7, 2019 1:15 AM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Subject: Do not approve KIUC's long-term lease for diversions to Waiahi Hydropower Facility

KIUC should not be exempted from the EIS requirement.

A&B, Wailuku Water Company, and Mahi Pono should not be allowed to divert if stream flow standards aren't met.

Do not approve the continued abuse of water rights by these corporations.

Fay
MauiFay@me.com
Cell (808)498-8200



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September 3, 2021

Fay
mauifay@me.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Fay:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *KIUC should not be exempted from the EIS requirement.*

Response 1: Please note that the KIUC Water Lease is not within the scope of assessment within this EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B’s former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are discussed throughout Chapter 4 of the EIS.

Comment 2: *A&B, Wailuku Water Company, and Mahi Pono should not be allowed to divert if stream flow standards aren’t met.*

Do not approve the continued abuse of water rights by these corporations.

Response 2: We acknowledge your comments. Please note that the Proposed Action requests to divert the maximum amount of water from the License Area after compliance with the CWRM

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D&O. Also note that the current East Maui water revocable permits specify that quarterly reports to the BLNR are required. These reports are mandated to include a statement of compliance with the IIFS and identify the total amount of water being diverted from License Area measured at Honopou. It is expected, and the EIS takes into account, that compliance with the IIFS requirements under the CWRM D&O will also be required under the Proposed Action. In compliance with the CWRM D&O streamflow requirements, EMI has adjusted certain movable portions of gates to ensure that streamflow below the gates complies with the IIFS requirements. Compliance with the CWRM D&O IIFS requirements is always subject to CWRM staff verification.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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Dalton Beuprez

From: Hinano Kaleleiki <hekili201@gmail.com>
Sent: Monday, October 21, 2019 11:33 AM
To: Public Comment
Subject: Legal ownership of lands and resources from the legal titleholders and landowners.

I am not self appointed my appointment by undroken genealogical history, from the 1700 to the present date my title comes from the first sovereign kamehameha the great then reaffirmed by kamehsmeha the III during the inventory and incorperstion and proclamations of his lands during the Mahele 1848. By conveyances and proclamations I am the Legal owner of the lands and resources from the legal titleholders and landowners. With on the table I have been through your corrupt justice and court system. That showed no due process or fair and impartial treatment. It is so evedent of tampering fabricating and use of tactics of illegal and unlawful conduct. Its unbelievable but wear there is no justices then look for lawlessness. If you where to study my case you wouldn't have to go to far to see the lawlessness of the federal court system and the statecourt system..these are war crimes committed and human right violations. These imposter and so called elected officials and their corperations are going to be held liable or at least the ones sitting in the seats of control. By the laws of my country you will be held accountable for your actions. Piracy, treasonous and terrorist attack upon a peaceful nation state. One that there neutrality was jeopardised by the action of a treaty nation that promised to defend our sovereignty and neutrality. This has been broken by this terrorist country

Then there enforcement implanted their private mercenary army and added their illegal and unlawful injected laws and administered these fake laws and rules. The impostering as if they are the legal authority and titleholder of my lands and resources. Be advised you have been put on notice by the legal titleholders and landowners, the representative of the legal treaty nation of the last raining sovereign. Like I stated I am not self appointed nor is the position made up as yours are. This comes from the sovereign himself and the dominion authority of and by the absolute. My title is Konohiki my name is Hinano Kaleleiki, first law of the land Kanawai Mamala hoe. This give to my grandfather's in consinunity and in continuity with the customary laws of sovereign as well as international, maritime, united nations, the laws of the seas and our Kindom laws. Of the original treaty nation of Ko Hawaii pae aina the sovereign Hawaiian kingdom from 1843. Upon this status my lands and resources are private property and cannot be taken unlawfully or seized illegally or taken as spoils of war. This is in law your lawlessness will not go unpunished. I have done everything by the rule of law and I have not given you permission to do as you please or take what you wanted. I didn't give you permission to represent me in anyway whatsoever. Your ignorance of the true facts by your fake authority and jurisdictional authority. Will be what will charge you for as terrorist. There will be no place for you and your kind to hide in this world. At the age of 93, 94 and 95 these Nazi war criminals were brought to trial last week they still had to stand trial and charged with 5000 plus counts of accessories to murder. These acts of violence and abuse of powers terrorism and genocide of the Kanaka maoli people the original host culture of the lands to the Hawaiian islands. The modification of your engineered host culture to disenfranchises our people of this sovereign nation state. Is unbelievable your countrys characteristic proceeds you. The american way of life is WHAT YOU CANNOT STEAL YOU TRY AND BUY WHAT YOU CANNOT AFFORD OR BUY YOU TAKE. Your actions are down right or even worse than the nazi's. I have traveled this earth I have been on both ends of this world and the story is always the same. The people have the responsibility to correct their government when it no longer serves the people and the government works for its self, you the able body's and everything under the sun on the surface and below should be making the correction not a objection. Remove those that perpetuate these violations and criminal acts, I have served your country and once believe in it's TRUE position of freedoms equality and fairness. Only to find that it is not the country that it said it is and they do not stand by the rule of law. Your terrorist country has not honored any of its agreements as present as today with the Kurdish people lead them in to battle and leave them hanging. With no shame and no problem with lieing to it's people or their allies. is that the government you want. We the Kanaka maoli have and will always be the true nation of a none discriminatory society and the absolute in fairness and equality mindful of our environment and our people and culture. First to out law slavery in 1842 and anyone who practiced or dabbled in this trade found no conferred here. It's no to you to those that continue to assist and oppress our sovereign my dominion authority and those that continue to perpetuate this act of piracy espionage against the legal titleholders and landowners by conveyances and proclamations by the absolute kamehaneha

the III. The fabrication manipulation and fraudulen acts to steal, kill, cheat and lie with the intention to deprive me of my health and weath. You have No rights to be doing that kind of evil to anyone. You need to stop ceases and dismiss with all acts that do not comply with the law of the land there is no political question we are sovereign and authority is present instead of work with me you intend to profit and run. Thank you for your time with all the facts and evidence known to all of you, you apply your illegal law and rules within the sovereign territory of the Hawaiian Kingdom, the original treaty nation state of Ko Hawaii Pae Aina since 1843. My status is appointed my position is Konohiki. This is in law. No no and no. You can not sale or lease trade or give away what you do not owne this is stealing, larceny, intent or knowingly to do harm or deprive from other what is legally theirs by deception. Stop make right the wrongs and make restitution and compensation for damages. Your laws are shallow and illegal stop and work with the dominion authority and jurisdiction authority and representative of the treaty nation. Everything is in tacteted just a few adjustments and you will see a better and heather nation one to be proud of. Because we implement what is good for me is good for you. Stop the illegal occupation an operation. Thank.you



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September 3, 2021

Hinano Kaleleiki
Hekili201@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Hinano Kaleleiki:

Thank you for comments dated October 21, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am not self appointed my appointment by undroken genealogical history, from the 1700 to the present date my title comes from the first sovereign kamehameha the great then reaffirmed by kamehsmeha the III during the inventory and incorperstion and proclamations of his lands during the Mahele 1848. By conveyances and proclamations I am the Legal owner of the lands and resources from the legal titleholders and landowners. With on the table I have been through your corrupt justice and court system. That showed no due process or fair and impartial treatment. It is so evedent of tampering fabricating and use of tactics of illegal and unlawful conduct. Its unbelievable but wear there is no justices then look for lawlessness. If you where to study my case you wouldn't have to go to far to see the lawlessness of the federal court system and the statecourt system..these are war crimes committed and human right violations. These imposter and so called elected officials and their corperations are going to be held liable or at least the ones sitting in the seats of control. By the laws of my country you will be held accountable for your actions. Piracy, treasonous and terrorist attack upon a peaceful nation state. One that there neutrality was jeopardised by the action of a treaty nation that promised to defend our sovereignty and neutrality. This has been broken by this terrorist country*

Response 1: We acknowledge your comments. However, please note that it is not within scope of the EIS to review your court case. The scope of the EIS assesses the anticipated environmental

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Letter to Hinano Kaleleiki

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impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 2: *Then there enforcement implanted their private mercenary army and added their illegal and unlawful injected laws and administered these fake laws and rules. The impostering as if they are the legal authority and titleholder of my lands and resources. Be advised you have been put on notice by the legal titleholders and landowners, the representative of the legal treaty nation of the last raining sovereign. Like I stated I am not self appointed nor is the position made up as yours are. This comes from the sovereign himself and the dominion authority of and by the absolute. My title is Konohiki my name is Hinano Kaleleiki, first law of the land Kanawai Mamala hoe. This give to my grandfather's in consinquity and in continuity with the customary laws of sovereign as well as international, maritime, united nations, the laws of the seas and our Kindom laws. Of the original treaty nation of Ko Hawaii pae aina the sovereign Hawaiian kingdom from 1843. Upon this status my lands and resources are private property and cannot be taken unlawfully or seized illegally or taken as spoils of war. This is in law your lawlessness will not go unpunished. I have done everything by the rule of law and I have not given you permission to do as you please or take what you wanted. I didn't give you permission to represent me in anyway whatsoever. Your ignorance of the true facts by your fake authority and jurisdictional authority. Will be what will charge you for as terrorist. There will be no place for you and your kind to hide in this world.*

Response 2: Your comments are unclear therefore we cannot provide you with a specific response. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 3: *At the age of 93, 94 and 95 these Nazi war criminals were brought to trial last week they still had to stand trial and charged with 5000 plus counts of accessories to murder. These acts of violence and abuse of powers terrorism and genocide of the Kanaka maoli people the original host culture of the lands to the Hawaiian islands. The modification of your engineered host culture to disenfranchises our people of this sovereign nation state. Is unbelievable your countrys characteristic proceeds you. The american way of life is WHAT*

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YOU CANNOT STEAL YOU TRY AND BUY WHAT YOU CANNOT AFFORD OR BUY YOU TAKE. Your actions are down right or even worse than the nazi's. I have traveled this earth I have been on both ends of this world and the story is always the same. The people have the responsibility to correct their government when it no longer serves the people and the government works for its self, you the able body's and everything under the sun on the surface and below should be making the correction not a objection. Remove those that perpetuate these violations and criminal acts, I have served your country and once believe in it's TRUE position of freedoms equality and fairness. Only to find that it is not the country that it said it is and they do not stand by the rule of law. Your terrorist country has not honored any of its agreements as present as today with the Kurdish people lead them in to battle and leave them hanging. With no shame and no problem with lieing to it's people or their allies. is that the government you want. We the Kanaka maoli have and will always be the true nation of a none discriminatory society and the absolute in fairness and equality mindful of our environment and our people and culture. First to out law slavery in 1842 and anyone who practiced or dabbled in this trade found no conferred here. It's no to you to those that continue to assist and oppress our sovereign my dominion authority and those that continue to perpetuate this act of piracy espionage against the legal titleholders and landowners by conveyances and proclamations by the absolute kamehaneha the III. The fabrication manipulation and fraudulen acts to steal, kill, cheat and lie with the intention to deprive me of my health and weath. You have No rights to be doing that kind of evil to anyone. You need to stop ceases and dismiss with all acts that do not comply with the law of the land there is no political question we are sovereign and authority is present instead of work with me you intend to profit and run. Thank you for your time with all the facts and evidence known to all of you, you apply your illegal law and rules within the sovereign territory of the Hawaiian Kingdom, the original treaty nation state of Ko Hawaii Pae Aina since 1843. My status is appointed my position is Konohiki. This is in law. No no and no. You can not sale or lease trade or give away what you do not owne this is stealing, larceny, intent or knowingly to do harm or deprive from other what is legally theirs by deception. Stop make right the wrongs and make restitution and compensation for damages. Your laws are shallow and illegal stop and work with the dominion authority and jurisdiction authority and representative of the treaty nation. Everything is in tacteted just a few adjustments and you will see a better and heather nation one to be proud of. Because we implement what is good for me is good for you. Stop the illegal occupation an operation. Thank.you”

Response 3: As noted in Response #2 above, your comments are unclear therefore we cannot provide you with a specific response. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System

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September 3, 2021

for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beuprez

From: KC Productions <jkakai.kauihou@gmail.com>
Sent: Wednesday, November 6, 2019 11:13 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: EMI Draft EIS

To Earl Matsukawa,

Please accept my comments to the Draft EIS for the Proposed Lease (Water Lease) for the Nahiku, Ke`anae, Honomanu, and Huelo License Area.

I feel deeply vested in this matter and care decisions considered about this proposed lease for my kuleana also know as "water" and to others a public trust because I am a lineal descendant. I have lived in Nahiku since the mid 30's. Yes I am 83 years old

and still take ownership to right to fish, both kahakai and kahawai. (fresh and salt water). Both right require water. Because the land does not appear like the barren stretches of dry acres known as plantation fields, THE EIS needs to include data that proves there are no land worth farming in east Maui. The EIS needs to include how well over 350 acres used for plantation in Nahiku alone well documented some how disappeared.

The EIS need to provide and include how they came to the conclusion that the fishing in the area is no longer good and will suffer no impact. I have seen the difference when Hanawi and Wahinemo`o was constantly flowing and teaming with food. Then I saw the rivers to bone dry for months on end. I remember when the ponds were left stagnant and we had an outbreak of dengui in the 90's. No one would have mercy for the community in Lower Nahiku to flush the river with fresh water to kill the mosquitos, not even the Board of Health. Now that the rivers have been restores gathering is good and lots of fish.

The EIS needs to include how much water will be kept in the river. Will they need to shut off the system for maintenance. When and for how long will the water be impacted. How many times a year if any.

The EIS needs to include their consultation process with the recommendation arm of DLNR known as AHA MOKU. Every moku has a representative. I find any consultation with this entity absent. Also, include all the kuleana.

The EIS needs to include an index as to definitions to some of the language with in their 2700 document. For example there is a section that talk about millions spent on operational cost and that is dropped when there was no more sugar production. Following that analysis they say so we can expect maintenance cost to go down. Is operational and maintenance the same expense?

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The EIS needs to include what they are going to water. The public trust can not be sold as a commodity and not necessity.

Please accept my concerns and if I may not be quiet clear and understanding please contact me by email.
 Mahalo

James Kaihou Sagawinit

The EI needs to include inventory of repairs and replacement if any on the ditch.



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. James Sagawint
Jkalai.kauihou@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Sagawint:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments to the Draft EIS for the Proposed Lease (Water Lease) for the Nahiku, Ke`anae, Honomanu, and Huelo License Area.*

I feel deeply vested in this matter and care decisions considered about this proposed lease for my kuleana also know as "water" and to others a public trust because I am a lineal descendant. I have lived in Nahiku since the mid 30's. Yes I am 83 years old and still take ownership to right to fish, both kahakai and kahawai. (fresh and salt water). Both right require water. Because the land does not appear like the barren stretches of dry acres known as plantation fields, THE EIS needs to include data that proves there are no land worth farming in east Maui. The EIS needs to include how well over 350 acres used for plantation in Nahiku alone well documented some how disappeared.

Response 1: We acknowledge your comments and understand that you are a long-time resident of Nāhiku who partakes in cultural and traditional practices. With regards to your comment about the public trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B’s 2001 application to the BLNR for the auction of the

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subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

Comment 2: *The EIS need to provide and include how they came to the conclusion that the fishing in the area is no longer good and will suffer no impact. I have seen the difference when Hanawi and Wahinemo`o was constantly flowing and teaming with food. Then I saw the rivers to bone dry for months on end. I remember when the ponds were left stagnant and we had an outbreak of dengui in the 90's. No one would have mercy for the community in Lower Nahiku to flush the river with fresh water to kill the mosquitos, not even the Board of Health. Now that the rivers have been restores gathering is good and lots of fish.*

Response 2: Please note that nowhere in the EIS is it stated that fishing in East Maui is no longer good. Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of

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impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in the pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat

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based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in the pages 4-78 to 4-83 of the Final EIS.

With regards to your comment about dengue and mosquitoes, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown in pages 4-58 to 4-61, pages 4-126 to 4-127, and pages 4-130 to 4-131 .

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e., they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g., guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

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Comment 3: *The EIS needs to include how much water will be kept in the river. Will they need to shut off the system for maintenance. When and for how long will the water be impacted. How many times a year if any.*

Response 4: On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

As discussed in Draft EIS Section 2.1.2 (East Maui/License Area) and 2.1.4 (Central Maui Field System), the long-term average delivery of water by the EMI Aqueduct System up until 1986 had been approximately 165 mgd (prior to any use of water by the MDWS or HC&S on the agricultural fields). This measurement was taken at Māliko Gulch. As discussed in Section 2.1.2

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of the Draft EIS, the amount of water that could be diverted from the License Area under the Proposed Action is approximately 87.95 mgd.

Please note that maintenance of the EMI Aqueduct System involves, at times, completely dewatering certain sections of the respective ditches to access and repair portions. As infrequent as this is (possibly bi-annually), it does occur. When this happens, EMI tries to return flows to the streams of origin as much as the system will allow.

Comment 5: *The EIS needs to include their consultation process with the recommendation arm of DLNR known as AHA MOKU. Every moku has a representative. I find any consultation with this entity absent. Also, include all the kuleana.*

Response 5: Regarding your comments about the EIS including the consultation process, Chapter 9 of the EIS contains all consultation efforts during this EIS process. Particularly, two aha moku members, one each from the Aha Moku o Hamakua Loa/Hamakua Poko and Aha Moku o Kaupo, participated during the EISPN process and commented on the EISPN and were encouraged to continue to participate throughout the entire EIS process. Additionally, the Aha Moku o Maui, Inc. was contacted and one member provided an interview as part of the Cultural Impact Assessment (Appendix F) for the EIS.

The CIA also includes outreach to members of the Aha Moku Council as listed in Table 12 of the CIA (among other groups and organizations). Of the recognized members of the Aha Moku Council who participated in the CIA, Mr. Nakanelua provided a discussion of Pākanaloa Heiau. The location and description of Pākanaloa Heiau is addressed in the LRFI in Section 2.4 (Walker Site 84). The heiau is located outside of the license area, on Ke‘anae Peninsula. The field inspection did not include an inventory of historic properties or inspection of historic properties outside of the License Area.

No other recognized members of the Aha Moku Council provided information on specific historic properties during consultation for the CIA.

Comment 6: *The EIS needs to include an index as to definitions to some of the language with in their 2700 document. For example there is a section that talk about millions spent on operational cost and that is dropped when there was no more sugar production. Following that analysis they say so we can expect maintenance cost to go down. Is operational and maintenance the same expense?*

Response 6: The EIS includes a list of acronyms and abbreviations that are used throughout the EIS. This list is found at the end of the Table of Contents and prior to the Summary. The Economic and Fiscal Impact Study included with the DEIS as Appendix H included an assessment of operational costs

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for the EMI Aqueduct System. Operational costs include maintenance, repair, and personnel costs. Due to the nature of the system, operational costs are largely fixed, with minimal variable costs. Future operational costs for the EMI Aqueduct System, estimated at \$1.8 million annually, are anticipated to be similar to the average cost experienced during the recent sugar operations period (2008-2013). Please note, the figure \$1.8 million is a correction from the figure of \$1.4 million that was included in the Draft EIS. The operational costs for the system are assumed to be similar across various future conditions alternatives, with the primary variation being the amount of the Water Lease payments that would be owed to the State, depending on the amount of water that is diverted.

Comment 7: *The EIS describes how they will maintain the banks with chemicals. The EIS needs to include alternate means to prevent contaminates in our drinking water, rivers and oceans.*

Response 7: Mahi Pono intends to use a limited amount of fertilizers and pesticides in accordance with all laws and regulations and only on an as-needed basis. As described in Section 2.1.4 of the Draft EIS, Mahi Pono's goals for its diversified farm plan will be guided by its core principles of using reasonable and environmentally responsible BMPs, planting non-GMO crops, and growing food for local consumption. In addition, since January 2020, Mahi Pono has also committed to foregoing the use of Round-Up and other glyphosate-based products within the Central Maui agricultural fields. This commitment is reflected in Section 4.12 of the Final EIS as shown pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations. Mahi Pono's use of fertilizers and pesticides will follow BMPs approved by the State of Hawai'i DOH, the U.S. NRCS, the U.S. EPA, the State of Hawai'i Department of Agriculture (DOA) and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff. The State of Hawai'i DOA's Pesticide Branch also provides regulatory oversight over Mahi Pono's pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. In addition, Act 45, which was passed by the 2018 Hawai'i Legislature and effective January 1, 2019, required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year.

Comment 8: *I started my comments with what I do which is kuleana aka (gathering rights). The EIS needs to include how they state there are none to very little traditional practices exercised there for will not have any impacts. Due to my age I now have my son go to the same place I was taught to go by my kupuna and tutu. Also, my grandsons and great grandsons and great grand daughters continue what my aged legs can't do.*

Response 8: Please note that nowhere in the EIS does it state that there are none to very little traditional practices exercised. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

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Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

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Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause

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whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Comment 9: *The EIS needs to include what they are going to water. The public trust can not be sold as a commodity and not necessity.*

Response 9: Please note that the Proposed Action entails the issuance of a long-term Water Lease for the purpose of developing, diverting, transporting and use of the State’s East Maui waters through the EMI Aqueduct System for the uses described in the EIS. With regards to your comment about the public trust, as noted in Response #1, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B’s 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

Comment 10: *Please accept my concerns and if I may not be quiet clear and understanding please contact me by email.*

The EIS needs to include inventory of repairs and replacement if any on the ditch.

Response 10: We acknowledge your comments. Under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beauprez

From: jungletree@hushmail.com
Sent: Wednesday, November 6, 2019 7:52 PM
To: ian.c.hirokawa@hawaii.gov
Cc: Public Comment
Subject: Maui Pono DEIS Comments
Attachments: DEIS Letter.pdf

Dear Mr. Hirokawa,

Aloha. Please find attached my comments on the Maui Pono DEIS.

Thank you.

Aloha and God Bless,
Jeff

Sent using Hushmail

Jeff Gray

P.O. Box 2051
Wailuku, HI 96793

November 6, 2019

Board of Land and Natural Resources
State of Hawaii
Mr. Ian Hirokawa
ian.c.hirokawa@hawaii.gov

Dear Mr. Hirokawa,

I am writing in regards to “The Proposed Lease (Water Lease) for the Nahiku, Keanae, Honomanu and Huelo License Areas Draft Environmental Impact Statement” (hereafter referred to as “DEIS”).

First, I am opposed in principle to Maui Pono or any other unproven entity being given control over the water belonging to the people of Hawaii, especially when it is unclear why (or if) they need such a massive amount. Of course, once they have been control of our water, it will be only that much harder to wrest it away from them at a future date.

Second, this process is being needlessly rushed and controlled by the very groups (Maui Pono, and A & B) who stand to gain so much if they are given unsupervised control of our water. However sad the demise of HC&S, at least it provides us with a rare and golden opportunity to take stock of our resources and plot a new, more egalitarian direction.

Third, for the 2,700-page DEIS to be fairly and completely evaluated it will take more than the 45-day period we have been given. (I, for one, only heard about this situation today.)

I am sure I don't have to remind you, Mr. Hirokawa, that you are a trustee, representing us, the people of Hawaii. As stated in the Hawaii Constitution, the government is entrusted with the duty to “protect, control and regulate the use of Hawaii's water resources for the benefit of its people.”

Respectfully yours,

Jeff Gray

cc: Wilson Okamoto Corporation



WILSON OKAMOTO
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10238-04
September 3, 2021

Mr. Jeff Gray
jungletree@hushmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Gray:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *First, I am opposed in principle to Maui Pono or any other unproven entity being given control over the water belonging to the people of Hawaii, especially when it is unclear why (or if) they need such a massive amount. Of course, once they have been control of our water, it will be only that much harder to wrest it away from them at a future date.*

Response 1: We acknowledge your comments and understand that you are opposed to the issuance of the Water Lease. With regards to your comment about Mahi Pono being unproven, please note that Mahi Pono has been farming the Central Maui agricultural fields since they were sold A&B’s former sugarcane land in December 2018 and has been expanding their agricultural operations since then. It is acknowledged that Mahi Pono is new entity that has just been recently formed with the goal of operating a large diversified agriculture farm in Hawai‘i. However, in its first 18 months of existence, Mahi Pono has hired over 200 workers from Maui, most of whom have farm experience on the island. In addition, Mahi Pono’s management has significant experience cultivating diverse crops on more than 100,000 acres on the continental U.S. Also, the company has established market channels, and substantial financial resources. The Mahi Pono farm plan is discussed not only in the Executive Summary, but in detail in Section 2.1.4. and Section 4.7.4, as well as Appendix I. Water requirements for 2030 are discussed in

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Subsection 9.a of Appendix I, with details provided in Table 3, Section 3.a of Appendix I. This table includes average daily per-acre water requirements by crop. Production figures are discussed in Subsection 10.a, with details provided in Table 4, Section 4.a of Appendix I.

The Mahi Pono farm plan will evolve over time based on a number of factors, including the available supply of surface water, experience which will be gained on crops that grow well in Central Maui, crops that are profitable, the size of the market for profitable crops, etc.

Comment 2: *Second, this process is being needlessly rushed and controlled by the very groups (Maui Pono, and A & B) who stand to gain so much if they are given unsupervised control of our water. However sad the demise of HC&S, at least it provides us with a rare and golden opportunity to take stock of our resources and plot a new, more egalitarian direction.*

Response 2: We respectfully disagree with your comment that this process is being rushed. Please note that the EIS process began in the year 2016. Specifically, As explained in Section 1.4 of the Draft EIS, in connection with A&B's May 2001 submittal to the BLNR requesting that the BLNR offer a long-term (30 year) water lease at public auction, A&B offered to perform the associated HRS, Chapter 343 environmental review. As part of the contested case hearing on the proposed Water Lease, NHLC, on behalf of Nā Moku, objected to A&B undertaking the environmental review process, and asserted that the BLNR was required to prepare conduct the environmental review. NHLC later orally withdrew its objection during oral arguments before the BLNR in May 2015. BLNR issued an order on April 14, 2016, directing A&B to scope the EIS, including the identification of the portions of the EIS that could proceed prior to the CWRM issuing a final IIFS decision, and those portions which could not. That scope was filed with the BLNR in June 2016. On July 8, 2016, the BLNR approved the scope and instructed that "A&B and EMI should proceed with the preparation of an environmental impact statement (EIS) in as expeditious manner as possible." The EIS recites this history in Section 1.3.3 of the Draft EIS and recognizes that the Water Lease will be awarded by public auction.

Regarding your comment that the water would be 'unsupervised', note that the current East Maui water revocable permits specify that quarterly reports to the BLNR are required. These reports are mandated to include a statement of compliance with the IIFS and identify the total amount of water being diverted from License Area measured at Honopou. It is expected, and the EIS takes into account, that compliance with the IIFS requirements under the CWRM D&O will also be required under the Proposed Action. In compliance with the CWRM D&O streamflow requirements, EMI has adjusted certain movable portions of gates to ensure that streamflow below the gates complies with the IIFS requirements. Compliance with the CWRM D&O IIFS requirements is always subject to CWRM staff verification.

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Comment 3: *Third, for the 2,700-page DEIS to be fairly and completely evaluated it will take more than the 45-day period we have been given. (I, for one, only heard about this situation today.)*

Response 3: Please note that the actual text of the Draft EIS is approximately 560 pages, which includes numerous graphics, and there are a total of thirteen appendices, nine of which were completed by technical consultants. We also note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). The Applicant made every reasonable effort to convey information through the Draft EIS in a manner that is accurate, thorough, and appropriately concise in order to provide the public with an opportunity to fairly analyze the potential impacts of the Proposed Action. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 4: *I am sure I don't have to remind you, Mr. Hirokawa, that you are a trustee, representing us, the people of Hawaii. As stated in the Hawaii Constitution, the government is entrusted with the duty to "protect, control and regulate the use of Hawaii's water resources for the benefit of its people.*

Response 4: We acknowledge your comments. Note that the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Jenny Pell <jennypell@gmail.com>
Sent: Wednesday, November 6, 2019 3:02 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: DEIS Comments
Attachments: [DEIS Comments Jenny Pell.pdf](#)

Date: November 6th, 2019

To: Ian Hirokawa - ian.c.hirokawa@hawaii.gov
 Wilson Okamoto - waterleaseeis@wilsonokamoto.com
 Earl Matsukawa

From: Jenny Pell - jennypell@gmail.com

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke`anae, Honomanu, and Huelo license areas.

Please accept my comments on the subject DEIS. I have attached these comments in a PDF format on this email. Please send me an email verifying that you received this email on time. Mahalo nui, Jenny Pell

I care deeply about this proposed lease of public water because I am Maui resident and a regenerative agriculture expert and consultant, with specialties in agroforestry, windbreaks, water conservation in farming, and farm profitability. I am very concerned that the DEIS does not include essential information about proper commercial farming water conservation strategies that systematically reduce the needs for water over time. I am also a concerned citizen who respects indigenous farming and fishing, and believes that the water is a public trust and that opening (and keeping open) streams for indigenous practices is of tantamount importance.

1. The EIS needs to include the reasons why Mahi Pono needs a 30 year lease for the water, when there are many proven strategies to reduce water needs in commercial farming, that lead to higher yields and more profitability. The DEIS needs to include all the best practices agriculture studies showing these results:

- USDA Studies of how adding at least 1% organic matter to the soil increases the soil water carrying capacity by 25,000 gallons per acre. Over time this needs to be 5% - 6% organic matter in the soil to further save water.

- Planting diverse cover crops increases water retention in the soil, and builds healthy soil, reduces erosion (which in turn protects reefs), and reduces external input costs such as nitrogen and other fertilizers

- Mulching crops reduces evapotranspiration, cools the soil, builds healthy soil, and reduces erosion

- Planting robust windbreaks increases water infiltration into the soil, increases the water-holding capacity of the soil, stems nutrient loss, drastically reduces evapotranspiration and irrigation losses, protects crops from damaging winds and physical

abrasions, and thereby buffers against diseases in crops weakened by drying and damaging winds

- Earthworks including keyline design and swales that keep precious rainfall and irrigation water on the land and slowly infiltrate that water into the soil. This also protects from soil erosion (which leads to loss of topsoil and reef siltation)

- Practice rotational grazing of livestock to substantially increase the water-carrying capacity of the soil, reduce run-off, deposit manures/fertilizers, stimulate crops growth, reduce compaction, and build soil organically (which again allows the soil to hold more water)

- Use biochar which is proven to improve water-retention and water-holding capacity in the soil

- Plant perennial crops, hedgerows, deep-rooted vetiver, and pollinator strips. Perennial crops are robust, they protect soil from erosion and improve soil structure, increase ecosystem nutrient retention, sequester carbon, increase water infiltration, and contribute to climate adaptation and mitigation

- Apply Compost and use Compost teas.

The EIS needs to include all of the above proven water-saving techniques, all of which are endorsed, promoted, and often funded by the USDA. Using these strategies, Mahi Pono will need less water every year, be more profitable, have healthier soil, improve watersheds, increase biodiversity, and be a good corporate farming citizen. Mahi Pono can easily reduce their water needs every year while earning more money.

2. The EIS needs to include all the remaining crops planned over what time period, and in what locations. The current map as presented in the DEIS is incomplete. When it is known what acreage of which crops will be planted in what specific locations over time, it can be determined how much water per acre each crop will need. Over-irrigating crops leads to root rot, wilting trees/coffee plants, and eventual failure of the crop. Until we have the complete farm plan it is impossible to say how much water is needed – for which crop, which location, and in what time frame. If there are no plans to plant acreage for several years clearly less water is required.

3. The EIS states that 30% of the water that originates in the license area is owned by A&B. The DEIS needs to present evidence of said ownership, and should not assume this is true.

4. The EIS needs to show a diagram of how the Nahiku Ditch households are connected to the ditch, as stated in the DEIS currently. It is a fact that the Nahiku area households water comes from groundwater tunnels, not ditches.

5. The EIS needs to show evidence of current salination analysis of the wells that they claim are too salty for irrigation, to verify that this claim is true. Also, the DEIS needs to include that healthy soil that uses mycoremediation strategies has proven to buffer against salted soils and slightly brackish well-water. Also the DEIS needs to include which crops will be planted where so we can research whether they truly are sensitive to brackish water. An example is coconuts, which thrive in brackish water.

6. The EIS needs to include impacts on fish, and the impressive rebound in every stream that has been reopened in the last three years on Maui. The Bishop Museum conducted 9 years of studies on fish rebound and the return of robust fish systems the Big Island after the closure of the sugar cane industry. The DEIS needs to include these studies.
7. The EIS needs to include facts about low-flow streams and problems with mosquito blooms.
8. The EIS needs to include the current and historical acreages of kalo and other perennial and annual crops to counter the claim that "East Maui only has only 44 acres total potential kalo crops and 35 acres for truck farming" as stated by the report. This also needs to include the POTENTIAL acreages that can come into cultivation if more streams are opened. East Maui supported a large population prior to the ditch system's construction, with master farmers and master fishermen cultivating and abundantly harvesting vast areas all across the area that now takes the majority of water via the EMI ditch system.
9. The EIS needs to include facts regarding the Ahupua`a of the each stream prior to ditch construction for real comparisons to current production, both for indigenous farming and for fishing. It is well documented across the globe that the interface of fresh water streams into the ocean is where there is an abundance of fish. The statement in the DEIS that fisheries are insignificant/non-existent is specious, as the fresh water has not been flowing for many decades, thereby changing the previous abundant fish supplies and stream-interface fisheries that were traditional fishing areas.
10. The EIS needs to include a comprehensive archeological survey across the entire East Maui license areas. It is not true that managing the ditch system does not disturb any Hawaiian cultural Iwi, lo`i sites, and other areas of cultural significance.
11. The EIS needs to verify the claim that only the Central Valley has the substantial potential to grow useful food crops for Maui's future. I have studied the Central Valley Mahi Pono lands extensively and this statement is false. The EIS needs to include a complete study of all the arable land on Maui, either in cultivation, or with the potential to be in cultivation to verify or disprove this claim.
12. As much as 30% of the Mahi Pono land is considered marginal growing areas, and the EIS states Mahi Pono will be farming only 16,900 acres, and grazing 5,000 acres. This only equals 21,000 acres, which does not support their claim to need that quantity of water, nor to need it for 30 years.

I am asking that the EIS include this important information. Thank you for the opportunity to submit comments on this DEIS.

Jenny Pell
jennypell@gmail.com

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(206) 949-0496



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10238-04
September 3, 2021

Ms. Jenny Pell
jennypell@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Pell:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I care deeply about this proposed lease of public water because I am Maui resident and a regenerative agriculture expert and consultant, with specialties in agroforestry, windbreaks, water conservation in farming, and farm profitability. I am very concerned that the DEIS does not include essential information about proper commercial farming water conservation strategies that systematically reduce the needs for water over time. I am also a concerned citizen who respects indigenous farming and fishing, and believes that the water is a public trust and that opening (and keeping open) streams for indigenous practices is of tantamount importance.*

Response 1: The introductory statements conveying your interest in the subject Water Lease and outlining your background are acknowledged. Thank you for participating in the Draft EIS review process and for providing commentary on the subject Draft EIS, as outlined in your letter. Point by point responses to your specific comments are provided in this letter.

Comment 2: *The EIS needs to include the reasons why Mahi Pono needs a 30 year lease for the water, when there are many proven strategies to reduce water needs in commercial farming, that lead to higher yields and more profitability.*

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Response 2: Please note that an alternative duration for the subject Water Lease is discussed and evaluated within Section 3.2.2.1 of the EIS, and a comparative evaluation of that alternative, and the other reasonable alternatives, is provided throughout out Section 3.4 of the EIS. Table 3-2 has been added to the Final EIS to provide a comparative table of the environmental benefits, costs, and risks of the Proposed Action at full implementation of the Mahi Pono farm plan, the "No Action" alternative, and the reasonable alternatives to the Proposed Action, including the Alternative Lease Duration alternative. See pages 3-49 to 3-80 of the Final EIS.

The Applicant requested that the Board of Land and Natural Resources (BLNR) consider the issuance of a long-term (30-year) water lease. However, it is acknowledged that the BLNR has the authority to offer a water lease with a term that is either shorter or longer than 30 years, provided, however, that under Hawai‘i Revised Statutes (HRS) § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. As discussed in Section 3.2.2.1 of the Draft EIS:

Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

Moreover, as discussed in Section 4 of Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts) of the EIS, and as summarized in EIS Section 2.1.5, a long-term Water Lease is important for the viability of diversified agriculture in Central Maui:

An estimated 10 years will be required for Mahi Pono and lessees to remove volunteer (i.e., rogue) sugarcane and weeds from 30,000 acres, amend soils, install field improvements (e.g., irrigation systems, fencing, etc.), build warehouses and other structures), and plant crops.

In addition, about 5 years or more will be required for avocado, citrus and coffee trees to reach full maturity, and 12 years or more for macadamia nuts. After reaching maturity, macadamia nuts trees will provide yields for 35 years or more, citrus and coffee for 50 years or more, and avocado for over 100 years.

In order for Mahi Pono and other farmers to justify the very substantial investment in a 30,000-acre farm, a long-term water lease will be required. A short-term lease would derail development of the Mahi Pono Farm Plan—or any long term

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agricultural use of the Central Maui fields including any plan to convert the Central Maui lands to diversified agriculture—because of the risk of not being able to farm for a long enough period to recover their planned investment.

Consequently, a shorter lease term would not be feasible nor conducive to achieving the objectives of the Proposed Action as set forth in Section 1.2 of the Draft EIS.

It should be noted that Mahi Pono expects to invest over \$20 million to increase the efficiency of its private Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to the Executive Summary, Section 2.1.4, and various other sections of the Final EIS as shown on page v and page 2-25.

Mahi Pono has also implemented several water saving strategies for the Central Maui agricultural fields and continues to evaluate additional methods. Mahi Pono water saving strategies include the following:

- Planting windbreaks in the fields.
- Incorporating significant uses of weed mat along plant lines, which will reduce evapotranspiration and erosion.
- Mowing rather than plowing inter-rows to preserve organic matter and keep cover to prevent soil erosion.
- Operating within the terms of a Conservation Plan from NRCS, which includes swales and diversions for erosion protection.
- Practicing rotational grazing of livestock.
- Planting permanent tree crops that will develop canopies that will assist with soil moisture retention and reduce evapotranspiration.

It should also be noted that as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. However, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Comment 3: *The DEIS needs to include all the best practices agriculture studies showing these results:*

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- USDA Studies of how adding at least 1% organic matter to the soil increases the soil water carrying capacity by 25,000 gallons per acre. Over time this needs to be 5% - 6% organic matter in the soil to further save water.

- Planting diverse cover crops increases water retention in the soil, and builds healthy soil, reduces erosion (which in turn protects reefs), and reduces external input costs such as nitrogen and other fertilizers

- Mulching crops reduces evapotranspiration, cools the soil, builds healthy soil, and reduces erosion

- Planting robust windbreaks increases water infiltration into the soil, increases the water-holding capacity of the soil, stems nutrient loss, drastically reduces evapotranspiration and irrigation losses, protects crops from damaging winds and physical abrasions, and thereby buffers against diseases in crops weakened by drying and damaging winds

- Earthworks including keyline design and swales that keep precious rainfall and irrigation water on the land and slowly infiltrate that water into the soil. This also protects from soil erosion (which leads to loss of topsoil and reef siltation)

- Practice rotational grazing of livestock to substantially increase the water-carrying capacity of the soil, reduce run-off, deposit manures/fertilizers, stimulate crops growth, reduce compaction, and build soil organically (which again allows the soil to hold more water)

- Use biochar which is proven to improve water-retention and water-holding capacity in the soil

- Plant perennial crops, hedgerows, deep-rooted vetiver, and pollinator strips. Perennial crops are robust, they protect soil from erosion and improve soil structure, increase ecosystem nutrient retention, sequester carbon, increase water infiltration, and contribute to climate adaptation and mitigation

- Apply Compost and use Compost teas.

The EIS needs to include all of the above proven water-saving techniques, all of which are endorsed, promoted, and often funded by the USDA. Using these strategies, Mahi Pono will need less water every year, be more profitable, have healthier soil, improve

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watersheds, increase biodiversity, and be a good corporate farming citizen. Mahi Pono can easily reduce their water needs every year while earning more money.

Response 3: Your comments regarding agricultural best practices are acknowledged. Mahi Pono has an inherent long-term interest in farming the Central Maui agricultural fields consistent with best practices that are most suitable for those lands. The Mahi Pono farm team, as well as its lessees, follow Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in the use of chemicals, and controlling dust and erosion and runoff associated with their farming activities. As it relates to agricultural chemicals for diversified agriculture, usage would be in strict compliance with federal regulations and Mahi Pono will exercise due care to prevent the release of fuels, lubricants and other hazardous materials. Mahi Pono intends to use a limited amount of fertilizers and pesticides in accordance with all laws and regulations and only on an as-needed basis. In addition, as mentioned above, since January 2020, Mahi Pono has also committed to foregoing the use of Round-Up and other glyphosate-based products within the Central Maui agricultural fields.

As Mahi Pono incrementally increases the amount of farmed acreage over time and crops are planted (particularly the permanent orchard crops), ground disturbance will be again be limited, as appropriate and consistent with farming BMPs. Towards this end, as noted in Response #2 above, Mahi Pono has implemented several water saving strategies for the Central Maui agricultural fields and continues to evaluate additional methods, some of which are consistent with the specific measures you recited. Mahi Pono water saving strategies include the following:

- Planting windbreaks in the fields.
- Incorporating significant uses of weed mat along plant lines, which will reduce evapotranspiration and erosion.
- Mowing rather than plowing inter-rows to preserve organic matter and keep cover to prevent soil erosion.
- Operating within the terms of a Conservation Plan from NRCS, which includes swales and diversions for erosion protection,
- Practicing rotational grazing of livestock.
- Planting permanent tree crops that will develop canopies that will assist with soil moisture retention and reduce evapotranspiration.

Comment 4: *The EIS needs to include all the remaining crops planned over what time period, and in what locations. The current map as presented in the DEIS is incomplete. When it is known what acreage of which crops will be planted in what specific locations over time, it can be determined how much water per acre each crop will need. Over-irrigating crops leads to root rot, wilting trees/coffee plants, and eventual failure of the crop. Until we have the complete farm plan*

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it is impossible to say how much water is needed – for which crop, which location, and in what time frame. If there are no plans to plant acreage for several years clearly less water is required.

Response 4: As discussed in Section 2.1.4 of the Draft EIS, Mahi Pono’s farm plan is expressly intended to be conceptual based on best information known at this time and is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type and context of agricultural initiatives outlined for pursuit (i.e. orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community.

It is anticipated that the Mahi Pono farm plan will continue to evolve over time based on a number of factors, including the available supply of surface water, experience which will be gained on crops that grow well in Central Maui, crops that are profitable, the size of the market for profitable crops, etc. Mahi Pono’s farm plan and its impacts are based on a production timeline of full operations by 2030. It is explained in Section 2.1.5 of the Draft EIS that it will take approximately 10 years for Mahi Pono and its lessees to properly prepare their lands for cultivation including actions to remove volunteer sugarcane and weeds, amend soils, install field improvements, etc. It is also noted that the Draft EIS includes a variation of the Mahi Pono farm plan in the event that a Water Lease is not issued as discussed in Section 3.4.13. Both the Mahi Pono farm plan associated with the Water Lease under the Proposed Action and the No Action alternative farm plan provide information about the gallon per acre per day requirements based upon the mix of agricultural uses proposed. See Table 2-1 and Table 3-1 of the Draft EIS for more details. Please note that some water use projections for the Mahi Pono farm plan under the Proposed Action have been revised, as shown on page 2-29, which also provides an updated discussion of Mahi Pono’s water use as of October 2020 and projected water use for 2021 based upon projected agricultural operations for that period.

The Mahi Pono team has extensive experience in agriculture and is aware of the risks posed by root rot and has planned accordingly. Furthermore, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

The locations of crops for the near-term plantings are shown in Figure 23 in Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts) in the Draft EIS, as updated in the Final EIS and provided as Figure 2-10 of the Final EIS, depicted on page 2-32. Figure 2-9 of the EIS (previously Figure 2-6 of the Draft EIS) depicts the Mahi Pono farm plan at full implementation.

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The approach to estimating impacts and the level of detail are consistent with EIS requirements. A rigid farm plan and detailed schedule—i.e., specific future crops planted on specific fields and when, annual growth of various orchard crops and their yields, annual changes in water requirements, etc.— would be unrealistic as a basis for meaningful discussion or evaluation.

Comment 5: *The EIS states that 30% of the water that originates in the license area is owned by A&B. The DEIS needs to present evidence of said ownership, and should not assume this is true.*

Response 5: The Draft EIS does not state that 30% of the water that originates in the License Area is owned by A&B. Rather, Section 3.3 of the Draft EIS explains that ". . . under the 1938 agreement and a related calculation involving isohyet analysis of rainfall patterns, it is understood that approximately 30% of the water in the License Area streams is derived from the privately-owned lands. Therefore, the EMI Aqueduct System could continue to divert approximately 30% of the water available from the Collection Area . . . "

A copy of the 1938 Agreement has been provided within the Final EIS as Appendix R. The 30% figure was agreed to between the BLNR and EMI at the end of 1987, to represent the amount of water originating from private (vs. State) lands in the 50,000-acre Collection Area and was based on estimates of the average annual total yields from the streams in License Area. Prior to that time, the United States Geological Survey (USGS) provided a table in which USGS estimated, for each of the four license areas, the percentages of water estimated to have arisen on State land versus private land. This was explained in the testimony and exhibits submitted to the Commission on Water Resource Management (CWRM) throughout the contested case hearing on the petitions to establish interim instream flow standards (IIFS), which petitions were resolved by CWRM's issuance of its Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O). Copies of relevant documents on this subject have been appended to the Final EIS as Appendices R-1, R-2, R-3, R-4, and R-5, and are further described in Section 3.3 of the Final EIS as shown in the enclosed pages 3-24 to 3-25.

Comment 6: *The EIS needs to show a diagram of how the Nahiku Ditch households are connected to the ditch, as stated in the DEIS currently. It is a fact that the Nahiku area households water comes from groundwater tunnels, not ditches.*

Response 6: In response to your comment requesting diagrams specifically showing where Nāhiku water comes from, please see page 2-23 which has been added to the Final EIS as Figure 2-6. Please note, the description of the Nāhiku water service from Section 2.1.3.3 of the Draft EIS, has been revised to take into account clarifications provided by the County of Maui Department of Water Supply (MDWS), as shown in pages 2-21 to 2-22.

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According to MDWS, EMI's Nāhiku Tunnel is the sole source of water for the MDWS Nāhiku Water Service Area. It is also our understanding that EMI developed and owns the Nāhiku Tunnel. Per a 1973 Memorandum of Understanding, as amended, MDWS can draw up to 20,000 gallons of water per twenty-four hour day to serve the Nahiku community. EMI continues to deliver water to the MDWS for the Nāhiku community pursuant to the agreement. However, that continued delivery is premised upon EMI's continued receipt of permits or a lease from the State BLNR.

Comment 7: *The EIS needs to show evidence of current salination analysis of the wells that they claim are too salty for irrigation, to verify that this claim is true. Also, the DEIS needs to include that healthy soil that uses mycoremediation strategies has proven to buffer against salted soils and slightly brackish well-water. Also the DEIS needs to include which crops will be planted where so we can research whether they truly are sensitive to brackish water. An example is coconuts, which thrive in brackish water.*

Response 7: Regarding your comment about current salination for the irrigation wells in the Central Maui agricultural fields, please note that there are 10 brackish groundwater wells that can serve the Central Maui agricultural fields. The Draft EIS referred to 15 brackish groundwater wells in Section 2.1.4 and Section 3.1.1.1 which discussed the Groundwater Alternative. This information was derived from the CWRM D&O, Finding of Fact (FOF) 738, as that was the number of brackish groundwater wells utilized during sugarcane operations by A&B. However, Mahi Pono only has access to 10 brackish wells that can serve the Central Maui agricultural fields. Please note that Section 2.1.4, Figure 2-7, and Section 3.1.1.1 of the Final EIS have been revised as shown on pages 2-23 to 2-25 and pages 3-3 to 3-4.

In response to your request regarding the Mahi Pono wells, please see the table below, which has been added to Section 4.2.2 of the Final EIS as shown in page 4-75.

State Well No.	TMK Number	Installed Pump Capacity (MGD)	Typical Range of Chlorides (MG/L) from 2003 through 2014 ¹	CWRM Delineated Aquifer System
4825-001	(2) 3-8-004:001	20.448	225 to 350	Pā'ia
5226-002	(2) 3-8-006:001	24.048	350 to 550	Kahului
5224-002	(2) 3-8-003:004	15.120	350 to 550	Pā'ia

¹ There is limited salinity data prior to 2003 and after December 2014, surface water for irrigation use rapidly declined as A&B ramped down operations prior to closing in 2016.

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5323-001	(2) 3-8-001:006	20.016	No data	Pā'ia
5424-001	(2) 3-8-001:007	5.760	400 to 700	Pā'ia
5522-001	(2) 2-5-005:021	8.640	350 to 525	Pā'ia
5422-001	(2) 2-5-005:054	10.080	350 to 525	Pā'ia
5422-002	(2) 2-5-005:020	11.664	325 to 475	Pā'ia
5321-001	(2) 2-5-005:019	30.240	400 to 1600	Pā'ia
5520-001	(2) 2-7-004:032	10.080	900 to 1600	Ha'ikū

The salinity levels fluctuate and therefore a range was provided. Note that Mahi Pono is in the early stages of implementing its farm plan and thus has not pumped a significant amount of ground water for its farming operations, and has not measured the salinity levels of those wells that it did pump.

Regarding your comment that the salt tolerance of crops need to be verified, Section 5 of Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts) in the Draft EIS states that:

According to the Maui Department of Water Supply, "Many of the older high-capacity irrigation wells and shafts operated by sugarcane plantations in central Maui reported salinity exceeding 4 percent of seawater" ("Maui Island Water Use and Development Plan Draft, Part III Regional Plan, Central Aquifer Sector Area," Nov. 2018). Akinaka & Associates (A&A) found that, during prolonged droughts, the brackish groundwater in Central Maui had average salinity of about 3.6% seawater (chlorides of about 703 mg/L), and this level of salinity is assumed for analysis.

Crops sensitive to salinity can be irrigated with diluted brackish water with little reduction in yields, provided that the water is less than about 0.9% seawater (derived from Government of Western Australia, Department of Agriculture and Food, "Water Salinity and Plant Irrigation," and Wikipedia, "Salt Tolerance of Crops").

Less than half of the crops planned for the lower-elevation fields are sensitive to salinity. With this in mind, a reasonably aggressive adjustment to this 0.9% seawater mix would result in irrigation water containing about 1.1% seawater. This adjustment would result in a target figure for irrigation water in the lower

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elevation fields of Central Maui of more than 70% surface water and less than 30% brackish groundwater ($30\% \times 3.6\% = 1.1\%$). The upper elevation fields of Central Maui would be irrigated with 100% surface water. Combining the upper and lower fields, the overall water split across all 30,000 acres would be approximately 80% surface water and 20% brackish groundwater water.

Hence, based on the crops proposed under the Mahi Pono farm plan and the salinity of the brackish groundwater wells available for use, approximately 20% of the water used to irrigate the crops and supplement the surface water diversions will be from the 10 brackish groundwater.

Regarding your comment about healthy soils that use mycoremediation strategies, please note that best practices and prevailing agricultural findings outline that the buildup of salt in the soils can be ameliorated through the flushing of soils and the planting of certain grasses, shrubs and trees. Mahi Pono will follow applicable best management practices to the extent feasible.

Notably, however, the central issue regarding the salinity of the aquifers underlying the Central Maui agricultural fields is the risk that the irrigation waters may be too salty to grow certain crops. It is anticipated that finding viable agricultural crops will require a range of trial and error efforts to identify an ideal crop mix that coordinates to the quality and amount of water available. Further, as noted in Section 5 of Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts) in the Draft EIS:

The irrigation system in Central Maui was not designed to vary the mix of surface water and brackish groundwater to accommodate crop needs of different fields. As a result, the surface-to-groundwater mix will be the same across all of the lower fields that can be irrigate[d] with groundwater.

Specifically, the above is described in Section 2.1.4 of the Draft EIS:

These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739). This pump station was designed and built to be an emergency water source for the high-elevation fields in the event of extreme drought.

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Regarding your comment about wanting to see where the various crops will be planted, please refer to Response #4 above.

Comment 8: *The EIS needs to include impacts on fish, and the impressive rebound in every stream that has been reopened in the last three years on Maui. The Bishop Museum conducted 9 years of studies on fish rebound and the return of robust fish systems the Big Island after the closure of the sugar cane industry. The DEIS needs to include these studies.*

Response 8: Please note that the Draft EIS discusses the potential impacts of the Proposed Action and alternatives on stream habitats and native amphidromous species in Section 4.2.1 and Appendix A (Assessment of Impacts of Stream Diversions On Instream Habitat in East Maui Streams Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model), as well as the potential impacts of the Proposed Action and alternatives on the nearshore and coastal environment in Section 4.2.3 and Appendix B (East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry).

The initial conclusion, as presented in Section 4.2.1 of the Draft EIS, was that "under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition." However, please note that Section 4.2.1 of the Final EIS has been revised, and the HSHEP model report provided as Appendix A has been clarified. Under the Proposed Action, the number of HU within the entire License Area is decreased by an estimated 36.1% from a theoretical Natural Condition (i.e., a condition where no streams are diverted). However, under the Proposed Action, the number of HU is increased by approximately 27.4% in comparison to the Full Diversion condition.

Habitat units (HU), as defined by the HSHEP model report are a relative measures of stream habitat where each unit length of stream is multiplied by the Habitat Suitability Indices for the particular species. It is important to recognize that the accumulation of HU for amphidromous species is additive, meaning that a single unit of stream may have a total HU in excess of the stream area quantified. In other words, if HU for multiple non-competitive species in a given area are added together, the combined HU could be greater than the area. This is important when considering the total HU for all eight amphidromous species in a stream as the total HU for all eight species may be greater than the total stream area.

Regarding your comment about the impressive rebound, please note that since the cessation of sugarcane operations in 2016, significantly less surface water has been diverted from East Maui.

As of October 2020, the EMI Aqueduct System was diverting an average of approximately 23.3 mgd from East Maui as discussed in Section 2.1.4 of the Final EIS (see pages 2-30 to 2-32). This

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is comparable to the amount diverted under the No Action alternative, which is estimated as 26.39 mgd from the License Area. As noted in Section 3.4.3 of the Final EIS, approximately 79.8% of the total stream HU would remain, or put conversely, the No Action alternative reduces HU by approximately 20.2% from natural flow conditions. When compared to the Proposed Action, discussed in Section 4.2.1 of the Final EIS, approximately 63.9% of the HU would remain, or put conversely, the Proposed Action reduces HU by approximately 36.1%. Hence, it is expected that stream HU may have increased since the cessation of sugarcane operations in late 2016. Please note that Section 4.2.1 of the Final EIS has been updated to include a general discussion more specific to the impacts and mitigations associated with the non-petitioned streams, and how stream flow restoration will influence HU in the License Area as shown on page 4-61 of the Final EIS. Moreover, the Cultural Impact Assessment (CIA) (Appendix F) also notes that several commenters to the Draft EIS stated that they have observed an increase in fish returning to the nearshore coastal environments since the cessation of sugarcane operations in 2016 which is noted in Section 4.6 of the Final EIS as shown on page 4-168.

Your comment does not provide a specific citation of the Bishop Museum document referenced. Based upon the limited description provided, we are not able to locate this study, nor able to review to verify its applicability. Nonetheless, although tangentially related, the ecosystems of Hawai'i Island are quite different from those evaluated within the scope of this EIS. Furthermore, the scientific consultants who prepared the East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry, provided as Appendix B to the EIS, are also not familiar with the subject study referenced in your comment, and could not corroborate or lend credence to its findings, as purported in your comment.

Comment 9: *The EIS needs to include facts about low-flow streams and problems with mosquito blooms.*

Response 9: Section 4.2.1 of the Draft EIS addressed the interplay between stream flow volume and mosquito habitat. The instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the HSHEP model and summarized in Section 4.2.1 and Section 4.4.2 of the EIS.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. Second, Hawaiian streams are naturally flashy (i.e., they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge

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amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g., guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. Unfortunately, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed.

While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. Anecdotal observations made by Trutta staff members, support the continued presence of Culex mosquitoes under a wide range of stream flows as they reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i. Please note that Section 4.2.1 of the Final EIS has been updated to include the above discussions related to the Culex mosquito as shown in pages 4-58 to 4-61.

Comment 10: *The EIS needs to include the current and historical acreages of kalo and other perennial and annual crops to counter the claim that “East Maui only has only 44 acres total potential kalo crops and 35 acres for truck farming” as stated by the report. This also needs to include the POTENTIAL acreages that can come into cultivation if more streams are opened. East Maui supported a large population prior to the ditch system’s construction, with master farmers and master fishermen cultivating and abundantly harvesting vast areas all across the area that now takes the majority of water via the EMI ditch system.*

Response 10: Regarding your comment that the EIS needs to include the current and historical acreages of kalo, please note that, based on comments received on the Draft EIS, the Archaeological Literature Review and Field Inspection (LFRI) report (Appendix E) has been further supplemented to include additional information on historical agriculture in East Maui which is reflected in Section 4.5 of the Final EIS as shown in pages 4-143 to 4-147, and the East Maui Water Lease: Agricultural and Related Economic Impacts (Appendix I) was also supplemented with additional information regarding potential taro farming and truck farming under the Proposed Action and associated alternatives, as summarized in EIS Section 4.7.4. See pages 4-288 to 4-293 of the Final EIS.

Also, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the EIS, where it is noted that CWRM ordered full flow restoration to the identified taro streams.

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It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for taro were identified through consultation on the EIS.

For the analysis included in Appendix I and summarized in Section 4.7.4, taro farms in East Maui (from Honopou to Nāhiku), including use of water from streams not subject to the CWRM D&O, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. This acreage is assumed for the Proposed Action and all associated alternatives since nearly all potential new taro cultivation is assumed to draw water from fully restored taro streams which will have the same flows under all alternatives. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops.

The above discussion has been added to Section 4.7.4 of the Final EIS as shown in pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

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Comment 11: *The EIS needs to include facts regarding the Ahupua`a of the each stream prior to ditch construction for real comparisons to current production, both for indigenous farming and for fishing.*

Response 11: Please note that construction of the EMI Aqueduct System started in the 1870s and was completed in 1923 as detailed in Section 1.3.2 of the Draft EIS. Due to the age of the diversions of the EMI Aqueduct System, we do not know of any past studies that show the conditions of the ahupua`a in East Maui prior to the diversions being constructed. However, there are mo`olelo that are known that provide insight to as what the East Maui ahupua`a may have looked like. The known mo`olelo are documented within Cultural Surveys Hawai`i's Archaeological LRFI report (Appendix E) which is summarized in Section 4.5 of the EIS; a subsection titled Historical Agricultural Land Use has been added to Section 4.5 of the Final EIS as shown in pages 4-143 to 4-147. In summary, historic maps dating between 1869 and 1922 were analyzed for the locations of farm plots and commercial agricultural ventures, which were quantified by type. Historic maps (1869-1922) document 1,126.3 acres of sugarcane, 38.1 acres of rice, 15.6 acres of taro, 14.7 acres of rubber (Ko`olau Rubber Company), and 13.3 acres of kula (fields, open pasture) in East Maui. Historic maps document an estimated total of 1,208 acres of farmland, including approximately 28.9 acres in use for traditional native Hawaiian agricultural practices (lo`i kalo and kula land). As with kuleana lands, the historic farmlands in East Maui were located near the coast in areas that could be accessed by trail or by ship.

Comment 12: *It is well documented across the globe that the interface of fresh water streams into the ocean is where there is an abundance of fish. The statement in the DEIS that fisheries are insignificant/non-existent is specious, as the fresh water has not been flowing for many decades, thereby changing the previous abundant fish supplies and stream-interface fisheries that were traditional fishing areas.*

Response 12: There are no statements made within the East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry report (Appendix B) or the Draft EIS that “*fisheries are insignificant/non-existent*”. The collected data presented in Appendix B and summarized in Section 4.2.3 of the EIS suggest that the broad scope of nutrient delivery conveyed from the streams to the ocean is limited. This is due to the intense mixing process that occurs when strong ocean currents – common in the nearshore ocean environments in East Maui – which quickly disperse a relatively small amount of fresh water into an exponentially larger ocean. Consequently, if nutrient concentrations in the ocean are not subject to substantial change, there is no meaningful vehicle for fishing to be negatively impacted by streamflow.

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow

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diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the

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estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83 of the Final EIS.

Comment 13: *The EIS needs to include a comprehensive archeological survey across the entire East Maui license areas. It is not true that managing the ditch system does not disturb any Hawaiian cultural Iwi, lo`i sites, and other areas of cultural significance.*

Response 13: An Archaeological LRFI report was prepared by CSH, in consultation with the Hawai'i State Historic Preservation Division (SHPD), to determine the likelihood that historic properties (any building, structure, object, district, area, or site over 50 years old) may be affected by the proposed Water Lease and, based on findings, consider cultural resource management recommendations. This study is summarized within Section 4.5 the EIS and appended as Appendix E. This document was intended to support the Proposed Action's compliance with environmental review requirements. The report provides a comprehensive review of traditional and historic background information of the region, a review of previous archaeological studies and findings in the region, and a field inspection of the License Area focused on inspecting the areas nearest to the EMI Aqueduct System infrastructure and access roads. Based on the research and analysis conducted for the LRFI, neither the Water Lease, nor the alternatives, is expected to have impacts on archaeological historic properties within the License Area because none of these actions include significant related ground disturbance. The proposed Water Lease will merely allow the Water Lease lessee to continue to enter and transit lands owned by the State in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System. In this context, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System.

There is no requirement under HRS Chapter 343 that an EIS include an archeological inventory survey (AIS). *Kaleikini v. Yoshioka*, 128 Hawai'i 53, 283 P.3d 60 (2012) (holding that, with respect to the EIS done for the Honolulu rail project, "although the final EIS did not include an AIS, it was nonetheless sufficient to enable the decision-maker to consider fully the environmental factors involved" and upholding the acceptance of the EIS). The Draft EIS, as required under HRS Chapter 343, includes extensive information about archaeological, historic, and cultural resources, including the following three technical studies: Historical Structure Assessment (Appendix D), Archaeological Literature Review and Field Inspection (Appendix E), and Cultural Impact Assessment (Appendix F). Initially, a Chapter 6E-7 and 6E-42 historic preservation review letter dated 25 January 2017 (Log No. 2017.00026; Doc. No. 1701GC08) sent from the SHPD to the DLNR Land Division requested that, pursuant to HAR §13-284-5(b)(5)(A and C), an AIS and an

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architectural inventory survey, be prepared prior to issuance of the Water Lease, and that the AIS be preceded by archeological inventory survey plan. Thereafter, additional information regarding the Water Lease was provided to the SHPD including the understanding that the proposed Water Lease will not involve any significant ground disturbance and that the potential impact of flooding from abandoning certain diversion (which is a requirement under the CWRM D&O irrespective of the Water Lease) will not be greater than periodic naturally occurring events. A subsequent Chapter 6E-8 historic preservation review letter (Log No. 2017.00026; Doc. No. 1706MBF11) sent from the SHPD to the DLNR Land Division updated the previous correspondence to no longer request the completion of an AIS plan or AIS for the License Area in conjunction with the proposed Water Lease because the Water Lease does not entail ground disturbing activities (other than what has taken place as part of routine maintenance).

Comment 14: *The EIS needs to verify the claim that only the Central Valley has the substantial potential to grow useful food crops for Maui's future. I have studied the Central Valley Mahi Pono lands extensively and this statement is false. The EIS needs to include a complete study of all the arable land on Maui, either in cultivation, or with the potential to be in cultivation to verify or disprove this claim.*

Response 14: The Central Maui agricultural fields at issue in this EIS consist of approximately 30,000 acres of cultivatable land as discussed in Chapter 4 of the Draft EIS. Specifically, Chapter 4 of the Draft EIS states:

For the purposes of this DEIS, Central Maui is comprised of the approximately 30,000 acres of agricultural land that had been cultivated with sugarcane for over a century utilizing water from the EMI Aqueduct System. Geographically, what is referred to as Central Maui encompasses approximately 36,000 acres, but approximately 6,000 acres is comprised of uncultivated areas, including roads, gulches, and patches of uncultivated land as shown in Figure 4-1.

Please note that the above has also been added to the Executive Summary as shown in pages iii to iv.

As summarized in Section 4.7.4 of the Draft EIS and Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts):

Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample

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water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

The basis for this finding is given in Subsection 5 of Appendix I of the Draft EIS, along with Figures 4 to 12 in Appendix I of the Draft EIS.

Moreover, as discussed in Section 5 of Appendix I and Section 4.7.4 of the Draft EIS, the overwhelming majority of the Central Maui agricultural fields (approximately 80%) are rated by the UH Land Study Bureau (LSB) as having the highest Overall Productivity Rating of "A" (on a scale of "A" to "E" with "E" being the lowest soil rating), and a little over 11% has a "B" rating. In other words, about 27,567 acres (90.9%) are high-quality lands rated A or B. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Classification System, developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), and the College of Tropical Agriculture, University of Hawai'i. Approximately 25,669 acres of the Central Maui agricultural fields are classified under the ALISH system as "Prime", which means "agricultural land which is land that is best suited for the production of crops because of its ability to sustain high yields with relatively little input and with the least damage to the environment." Also, as discussed in Section 5.1.4 of the EIS and Section 5 of Appendix I, approximately 22,000 of the 30,000 acres of agricultural fields in Central Maui are designated as Important Agricultural Lands (IAL). Under Article XI, Section 3, of the Constitution of Hawai'i, the State is required to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. HRS Chapter, 205, § 205-41 through § 205-52, provides for the designation of IAL. As stated in HRS Chapter 205: "*The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations.*" IAL designation facilitates the long-term dedication of lands for future agricultural use so long as there is a sufficient supply of water to allow for profitable farming.

However, the EIS and the associated technical studies do not claim that only Central Maui has the substantial potential to grow useful food crops for Maui's future. As discussed in Section 2.1 of the Draft EIS, the scope of this EIS is to assess the Proposed Action which is, "*...to enable the Board of Land and Natural Resources (BLNR)-awarded lessee the right, privilege and authority to enter and go upon State-owned lands for the purposes of developing, diverting, transporting and using government-owned waters. The requested Water Lease would allow the use of government-owned waters from the License Area (approximately 33,000 acres which includes lands within Nāhiku, Ke'anae, Honomanū, and Huelo) through the East Maui Irrigation Company,*

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LLC (EMI) Aqueduct System. Use of that surface water would allow the continued provision of water to enable approximately 30,000 acres of farmland in Central Maui to remain in agriculture.” Hence, the EIS assesses the action of obtaining a Water Lease and diverting water from East Maui. With regards to agriculture, under the Proposed Action, a major portion of the diverted water from East Maui would be used to irrigate the agricultural fields in Central Maui to continue to transition to diversified agriculture.

Comment 15: *As much as 30% of the Mahi Pono land is considered marginal growing areas, and the EIS states Mahi Pono will be farming only 16,900 acres, and grazing 5,000 acres. This only equals 21,000 acres, which does not support their claim to need that quantity of water, nor to need it for 30 years.*

Response 15: We respectfully disagree with your assertion that 30% of the Central Maui agricultural fields represent "marginal growing areas." The agricultural suitability of the Central Maui agricultural fields is addressed in Response #14 in quantifiable terms. Regarding your statement that the EIS states that Mahi Pono will be farming only 16,900 acres, and grazing 5,000 acres, equaling 21,000 acres, it is unclear where you gathered your information from. Nowhere in the EIS is that statement made. To the contrary, the EIS explains that at full operation (which is anticipated by 2030), the Mahi Pono farm plan will utilize approximately 30,000 acres in Central Maui. Section 2.1.4 of the Draft EIS state:

- *That total amount of water will be delivered to approximately 30,000 acres. Of those 30,000 acres:*
 - *Approximately 15,950 acres would be used for farming, including 12,850 acres for orchard crops and 3,100 acres for other crops.*
 - *Approximately 13,800 acres would be used for pasture, of which about 4,700 acres would be irrigated.*
 - *Approximately 250 acres would be used for green energy, such as a solar farm.*

Because there is insufficient surface water to support the entire farm plan, brackish groundwater will also be used. . .

This farm plan would consist of the following:

- *Approximately 20,650 acres of irrigated farm land, including 12,850 of orchard crops, 600 acres of tropical fruit, 1,200 acres of row and annual crops, in addition to a community garden and limited non-GMO energy crops.*
- *Approximately 13,800 acres of cattle pasture, comprised of 4,700 acres of irrigated pasture, and 9,100 acres of unirrigated pasture. This should fit the proposed model of grass-finishing on irrigated pasture. The unirrigated acreage is less than 10,000 acres,*

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which helps ensure that that the entire area devoted to unirrigated pasture will remain productive.

However, please note that Table 2-1 of the Draft EIS (Table 2-2 of the Final EIS) that was incorporated into Section 2.1.4 has been updated with more precise water usage numbers as shown on page 2-29.

Comment 16: *I am asking that the EIS include this important information. Thank you for the opportunity to submit comments on this DEIS.*

Response 16: Please note that we have updated the Final EIS as applicable, and the Final EIS includes your comments and this response letter. Thank you for your participation in this EIS process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.² Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

² Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Joe Ritter <joeritter3@yahoo.com>
Sent: Thursday, November 7, 2019 4:22 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas Aloha,

The period for comment needs to be extended. 45 days for 2,700 pages is insufficient for analysis. The Draft EIS does not mandate standards for monitoring and streamflow compliance. A correctly done EIS should include an evaluation and examination of the possible impacts of this 30-year lease on our fisheries and nearshore gathering areas.

30 years is far too long. I object to this use of natural resources. It is not in the public interest.

You have a constitutional requirement of upholding the public trust. This DEIS and proposed arrangement will not.

I look forward to the opportunity to provide further comments on the Final EIS.

Aloha,

Joe Ritter Maui resident



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Mr. Joe Ritter
Joeritter3@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Ritter:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The period for comment needs to be extended. 45 days for 2,700 pages is insufficient for analysis.*

Response 1: We acknowledge your comments. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 2: *The Draft EIS does not mandate standards for monitoring and streamflow compliance.*

Response 2: Please note that the EIS is a disclosure document and not a decision-making document, or in this case, a document that mandates standards. However, with regards to the IIFS set in the 2018 CWRM D&O, please note that the Proposed Action must be in compliance with the IIFS before any water is diverted through the EMI Aqueduct System. Also note that the current East Maui water revocable permits specify that quarterly reports to the BLNR are

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required. These reports are mandated to include a statement of compliance with the IIFS and identify the total amount of water being diverted from License Area measured at Honopou. It is expected, and the EIS takes into account, that compliance with the IIFS requirements under the CWRM D&O will also be required under the Proposed Action. In compliance with the CWRM D&O streamflow requirements, EMI has adjusted certain movable portions of gates to ensure that streamflow below the gates complies with the IIFS requirements. Compliance with the CWRM D&O IIFS requirements is always subject to CWRM staff verification.

Comment 3: *A correctly done EIS should include an evaluation and examination of the possible impacts of this 30-year lease on our fisheries and nearshore gathering areas.*

Response 3: Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa

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(*Eleotris sandvicensis*) and ‘Ōpae ‘oeha‘a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi‘ina‘au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa‘akea will have connectivity flow restoration, while ‘O‘opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi‘ina‘au Stream) have estuarine reaches, four of which were noted by Trutta’s HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR’s methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi‘ina‘au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa‘akea) have connectivity flow restoration ordered. Pa‘akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83 of the Final EIS.

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Comment 4: *30 years is far too long. I object to this use of natural resources. It is not in the public interest.*

Response 4: We acknowledge your comments. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Comment 5: *You have a constitutional requirement of upholding the public trust. This DEIS and proposed arrangement will not.*

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Response 5: Regarding your comment about the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

Comment 6: *I look forward to the opportunity to provide further comments on the Final EIS.*

Response 6: Please note that the Final EIS does not allow for public comment; only the EIS Preparation Notice and the Draft EIS allow for a public review period.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: jjdulac@everyactioncustom.com on behalf of Joelle Lambiotte du Lac
<jjdulac@everyactioncustom.com>
Sent: Wednesday, November 6, 2019 11:45 PM
To: Public Comment
Subject: Comments and Concerns about the EIS for the East Maui Water Lease Draft

Dear Mr. Matsukawa,

As a concerned citizen and resident of Maui, I would appreciate your attention to the following comments and concerns that I have concerning the continued diversion of East Maui streams. This has been going on far too long without the transparency necessary for the proper management of this vital common public resource.

Thank you for this opportunity to voice my deep conviction concerning this issue and to raise points that require further discussion and clarification before this proposal can be accepted.

- 1) It should be not taken as a given that East Maui resources can continue to be diverted as they have for 100 years and that no other solutions to Maui's water needs are taken into consideration.
- 2) Please provide proof that EMI is the owner of the EMI aqua duct system particularly for those lands that are State owned.
- 3) Please provide documents that prove the transfer of the aqueduct system to A&B or EMI from the Kingdom, Republic, Territory or State of Hawai'i.
- 4) Describe with full transparency the financials and ownership of Mahi Pono including foreign ownership. What is the potential impact of issuing to a non-Hawaiian entity compared to an auction to a Hawaii-based company or a public authority?
- 5) Explain why it is stated in the EIS that the City of Honolulu would receive \$120K in tax revenues. Why isn't Maui the recipient of these funds?
- 6) Explain how, given the obligation to provide water to DHHL and the cost of doing so, this could be achieved in the financial model presented. Mahi Pono would not generate the necessary funds with the prices of water proposed - however the low prices suggested would greatly increase the profitability of Maui Pono's agricultural operations.
- 7) The presentation of the threats to the upcountry water supply are grossly overstated and verge on a "scare tactic" - this should removed from the final document or accurately portrayed.
- 8) Will A&B (now a REIT) retain any water rights when the 17K acres that are currently owned jointly by A&B and Mahi Pono becomes 100% owner?
- 9) There needs to be a STRONG statement that no Monsanto RoundUp or any similar generic herbicide be used in the East Maui watershed.

10) There is no comprehensive analysis of the impact on Maui's economy and future by having Maui's water controlled by an off-island entity. Compare this to having the water managed, utilized and operated by a Water Authority.

Sincerely,
Joelle Lambiotte du Lac
Paia, HI 96779
jjdulac@aol.com



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Ms. Joelle Lambiotte du Lac
jjdulac@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Joelle Lambiotte du Lac:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *As a concerned citizen and resident of Maui, I would appreciate your attention to the following comments and concerns that I have concerning the continued diversion of East Maui streams. This has been going on far too long without the transparency necessary for the proper management of this vital common public resource.*

Thank you for this opportunity to voice my deep conviction concerning this issue and to raise points that require further discussion and clarification before this proposal can be accepted.

Response 1: We acknowledge your comments and offer you detailed responses below to each one of your points.

Comment 2: *It should be not taken as a given that East Maui resources can continue to be diverted as they have for 100 years and that no other solutions to Maui’s water needs are taken into consideration.*

Response 2: Please note that the Proposed Action does not assume that streams from the License Area will be diverted as they were for the past century. However, the Proposed Action implicates

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complex substantive issues with long histories. The EMI Aqueduct System has been diverting East Maui stream water for over a century as discussed in Section 1.3.2 of the Draft EIS. The Proposed Action cumulatively will result in the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4 albeit to a lesser extent and conditions are not anticipated to significantly change under the Proposed Action.

With regards to using less water than in the past, this is addressed in Section 2.1.2 of the Draft EIS as follows:

East Maui, specifically the License Area, has already been affected by increased stream flows resulting from less offstream diversions due to the closure of sugar operations in December 2016. Currently, the EMI Aqueduct System is only diverting approximately 20 mgd. As a result, very little surface stream water is currently being diverted relative to what would be allowed should the Water Lease be awarded per the Proposed Action. However, the amount of water that may be diverted should the Water Lease be issued is substantially less than the amount that was diverted during normal sugar production. For example, in 2006 it is estimated that the EMI Aqueduct System delivered approximately 156.69 mgd at Maliko Gulch, whereas under the CWRM D&O, it is estimated that the delivery at Maliko Gulch will be approximately 92.32 mgd (Akinaka, 2019).

However, please note that Section 2.1.4 of the Final EIS has been revised to reflect Mahi Pono's current and near-term expected water use as shown in pages 2-30 and 2-32, which details average water being diverted from East Maui streams through the EMI Aqueduct System and how that water will be used. It important to note that as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet the needs of the approved water uses, including the MDWS and of Mahi Pono's agricultural operations in Central Maui.

Although the Proposed Action will divert more water than under current conditions and when compared to the amount of water being diverted immediately prior to the cessation of sugarcane operations, the Proposed Action is not anticipated to result in significant adverse impacts as discussed throughout Chapter 4. The Proposed Action cumulatively will result in the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter

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4 albeit to a lesser extent and conditions are not anticipated to significantly change under the Proposed Action.

With regards to your comment about no other solutions, please note that alternatives to the Proposed Action were also analyzed. Specifically, Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3. Moreover, based on comments received on the Draft EIS, the alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the Final EIS.

Comment 3: *Please provide proof that EMI is the owner of the EMI aqueduct system particularly for those lands that are State owned.*

Response 3: Please note that the EMI Aqueduct System is owned and operated by the East Maui Irrigation Company, LLC. Please note that the 1938 Agreement between A&B / EMI (referred to as "the Company") and the Territory of Hawai'i, which has been added to the Final EIS as Appendix R, acknowledges EMI's ownership of the EMI Aqueduct System. Pursuant to the 1938 Agreement, the Territory of Hawai'i (now the State) granted perpetual easements to EMI for the placement of the EMI Aqueduct System. See EIS Section 3.3.

As described in Section 2.1.2 of the Draft EIS, the EMI Aqueduct System spans both State-owned and EMI-owned lands and is an integrated system. The Collection Area for the EMI Aqueduct System covers approximately 50,000 acres, of which 33,000 acres are owned by the State and 17,000 acres are privately owned. See Draft EIS Figure 1-1 (EMI Aqueduct System Collection Area). As mentioned above, under the 1938 Agreement, the State and EMI each granted to the other "perpetual" easements to those portions of the EMI Aqueduct System located on the other's land. The duration of these "perpetual" easements was stipulated to last until the termination of the 1938 Agreement. The 1938 Agreement is still in place and valid.

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Letter to Ms. Joelle Lambiotte du Lac

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The State may, but is not obligated to, terminate the 1938 Agreement only if the licenses are offered at auction but EMI fails to bid. EMI may, but is not obligated to, terminate the 1938 Agreement if the State fails to offer the licenses at auction. Thus, if no license is offered at auction, the 1938 Agreement provides that EMI may still collect water derived from the EMI-owned portions of the Collection Area and, utilizing the easement granted to it in the 1938 Agreement, transport it across the portions of the EMI Aqueduct System that transverse State lands.

The 1938 Agreement defines the “Territory” to include its “successors” (i.e., the State). EMI has not failed to bid at any auction of licenses, so the condition precedent for the State to have the right to terminate has not occurred. While the State has not yet offered the licenses at auction, EMI has not exercised its right to terminate and is instead a proponent of the Proposed Action which would lead to the licenses being offered at auction for the purpose of the continued integrated operation of the EMI Aqueduct System. Neither party has terminated the 1938 Agreement. Please note that this clarification has been added to Section 3.3 of the Final EIS as shown in pages 3-24 to 3-25.

Comment 4: *Please provide documents that prove the transfer of the aqueduct system to A&B or EMI from the Kingdom, Republic, Territory or State of Hawaii.*

Response 4: As noted in Response #3 above, the 1938 Agreement between A&B / EMI (referred to as “the Company”) and the Territory of Hawai‘i, which has been added to the Final EIS as Appendix R, acknowledges EMI’s ownership of the EMI Aqueduct System.

Comment 5: *Describe with full transparency the financials and ownership of Mahi Pono including foreign ownership. What is the potential impact of issuing to a non-Hawaiian entity compared to an auction to a Hawaii-based company or a public authority?*

Response 5: The ownership and financial relationships among the entities you listed are beyond the scope of the EIS, as those issues are not relevant to the analysis of environmental impacts. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 6: *Explain why it is stated in the EIS that the City of Honolulu would receive \$120K in tax revenues. Why isn’t Maui the recipient of these funds?*

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Response 6: The General Excise Tax (GET) is a State tax that flows to the State General Fund. However, the State legislature authorized counties to adopt a surcharge on the GET up to 0.5 percent, and such funds will remain in the County where the GET is generated. As of this writing, the County of Maui has not adopted a GET surcharge. However, the City and County of Honolulu adopted a surcharge of 0.5 percent, effective from January 1, 2007 to December 31, 2030. Economic impacts that occur on Maui will generate indirect impacts elsewhere, including on the island of O‘ahu. At full farm operations in Central Maui, the farms and the families of their employees will purchase various goods and services, thereby generating indirect sales. Most of the indirect sales will be on Maui, but some will be on O‘ahu since Honolulu is the primary supply center in the State. These indirect sales will be subject to State excise tax. Because the County of Maui has not adopted a GET surcharge, the County of Maui does not collect an excise-tax surcharge.

For clarification, p. 3-18 of the Draft EIS does not recite that Honolulu would receive \$120,000 in tax revenues. Under the Proposed Action, at full operations of the Mahi Pono farm plan it is projected that the City and County of Honolulu would derive about \$140,000 per year from the excise tax surcharge.

Comment 7: *Explain how, given the obligation to provide water to DHHL and the cost of doing so, this could be achieved in the financial model presented. Mahi Pono would not generate the necessary funds with the prices of water proposed - however the low prices suggested would greatly increase the profitability of Maui Pono’s agricultural operations.*

Response 7: We respectfully disagree with your comment that Mahi Pono would not be able to generate necessary funds given the obligation to provide water to DHHL. Specific information regarding the DHHL's future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related

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to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown in pages 2-4 to 2-7. As explained in pages 2-4 to 2-7, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water, CWRM could act on a reservation request related to a proposed lease.

As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the DLNR's Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

Consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture. Based on the multipliers used to conduct the analysis for the Agricultural and Related Economic Impacts report appended as Appendix I of the EIS, the estimated changes to the Mahi Pono farm plan that would result from an 11 mgd reduction in the supply of surface water would be as follows:

- Land Use, Central Maui
 - Crops: decreased by 1,906 acres (11 mgd × 173.31 acres/mgd)
 - Irrigated pasture: decreased by 161 acres (11 mgd × 14.62 acres/mgd)

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- Unirrigated pasture: increased by 2,067 acres (11 mgd \times 187.93 acres/mgd)
- Sales (Mahi Pono and tenants): decreased by \$18.4 million per year (11 mgd \times \$1.673 million/mgd)
- Employment (Mahi Pono and tenants): decreased by 93 jobs (11 mgd \times 8.447 jobs/mgd)
- Payroll (Mahi Pono and tenants): decreased by \$3.33 million per year (11 mgd \times \$0.303 million/mgd)

The above has been added to Section 2.1.4 as Footnote 6, to Section 4.7.3 as Footnote 16, and to Section 4.7.4 as Footnote 17 as shown in page 4-287 and page 4-304 of the Final EIS.

Hence, operating profits of Mahi Pono and its tenants would decrease by an estimated \$1.8 million per year (10% of sales) and agricultural operations would be impacted as described above based on an 11 mgd reduction of available water.

Comment 8: *The presentation of the threats to the upcountry water supply are grossly overstated and verge on a “scare tactic” - this should be removed from the final document or accurately portrayed.*

Response 8: We respectfully disagree with your comment that the discussion of alternatives as it relates to the MDWS receiving water being a ‘scare tactic’. The Draft EIS is intended to disclose the impact of the No Action alternative on Upcountry Maui, and the EIS includes an analysis of the various impacts that the termination of water service to MDWS could entail. No corrections are needed. The EIS assumes under the Proposed Action that approximately an average of 7.1 mgd is conveyed to MDWS at Kamole-Weir WTP from the EMI Aqueduct System via the Wailoa Ditch as discussed in Section 2.1.3.1 of the EIS. This is approximately more than half (\approx 54%) of the total surface water (13 mgd) delivered to the Upcountry Maui Water System. The 13 mgd accounts for approximately 80-90% of total water delivered to the entire Upcountry Maui Water System (CWRM D&O, FOF 799).

The reason the analysis comes to this conclusion is because the agreements MDWS has with EMI are contingent upon issuance of the Water Lease (or other suitable approvals for water use, such as revocable permits). Hence, under the No Action alternative, MDWS would no longer receive water from the EMI Aqueduct System, and no longer be entitled to diverted water from EMI's land (the Upper and Lower Waikamoi Flumes) to supply Upcountry Maui for its domestic and agricultural water demands as discussed in Section 3.3 of the EIS. Specifically, Section 3.3 of the Final EIS states in relevant part (revised from the Draft EIS to take into account that the Nāhiku community is not served by the EMI Aqueduct System):

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The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate for Upcountry Maui and Nāhiku. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS.

Comment 9: *Will A&B (now a REIT) retain any water rights when the 17K acres that are currently owned jointly by A&B and Mahi Pono becomes 100% owner?*

Response 9: Please note that this is speculative and beyond the scope of the EIS. As noted in Response #5 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 10: *There needs to be a STRONG statement that no Monsanto RoundUp or any similar generic herbicide be used in the East Maui watershed.*

Response 10: We acknowledge your comments regarding the use of Round-Up. Pesticide use is regulated by both State and Federal law. In January of 2020 EMI committed to foregoing using Round-Up to maintain the EMI Aqueduct System and any trails and access roads in East Maui. Mahi Pono’s use of these chemicals is compliant with all laws regulating pesticide use, and certified commercial applicators are utilized as required. Act 45 which was passed by the 2018 Hawai‘i Legislature and effective on January 1, 2019 required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. This report as well as any other report required by law is publicly available from the respective government entity. The State of Hawai‘i DOA's Pesticide Branch also provides regulatory oversight over Mahi Pono’s pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. It is also noted that since January 2020 Mahi Pono committed to discontinuing use of Round-Up. This information has been included in the Final EIS as shown in pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations.

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Comment 11: *There is no comprehensive analysis of the impact on Maui's economy and future by having Maui's water controlled by an off-island entity. Compare this to having the water managed, utilized and operated by a Water Authority.*

Response 11: We respectfully disagree with your comment. The financial impacts of the Water Lease as contemplated under the Proposed Action are discussed in detail in the analysis conducted for the Economic and Fiscal Impact Study report included as Appendix H and is summarized in Section 4.7.3 of the EIS. These are the expected impacts of the Proposed Action, regardless of whether the Water Lease lessee is a Hawai'i entity or otherwise. Specifically, Section 4.7.3 discusses the impacts of the Proposed Action, including a discussion of operational costs, revenue, employment and earnings related to the EMI Aqueduct System; agricultural operations in Upcountry Maui, Central Maui, and East Maui (i.e., taro cultivation); and the impact on public/domestic water supplies (and related issues) in Nāhiku and Upcountry Maui.

Specifically, Section 4.7.3.1 of the Draft EIS as it relates to EMI states:

Total operational costs for EMI labor, fringe benefits, materials, professional services, taxes, Water Lease, and other expenses are projected to be \$2.3 million per year. This would translate to \$0.068 per kgal. A currently unknown factor in EMI's operating cost is the annual Water Lease payment to DLNR. For the purposes of the economic impacts analysis, the Water Lease payment has been calculated based on the equivalent per unit cost under the existing 2019 revocable permit. The revocable permit rent payment set in November 2018 for calendar year 2019 was \$230,964.24, which represents an increase from the rent that was previously paid. Assuming 16.8 MGD is diverted under the 2019 revocable permit, the Water Lease rent rate would translate to \$0.038 per thousand gallons. This rate of \$0.038 is assumed as the basis for the future annual lease payment to the DLNR. However, the actual Water Lease rental amount will be based on an appraisal conducted prior to issuance of the Water Lease. Should the Water Lease amount be higher or lower, the operational costs of the EMI Aqueduct System would be adjusted accordingly.

Direct spending by EMI, excluding the long-term Water Lease payments to the State from the operational costs, is forecasted to be \$1.4 million. Total direct spending and indirect sales is estimated at \$3.2 million, of which \$2.6 million would be on Maui.

EMI is expected to employ a staff of 17 people with a payroll of \$0.8 million. Total direct and indirect jobs was 24, with an associated payroll of \$1.1 million.

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The direct and indirect jobs associated with EMI operations would support an estimated 54 residents.

Fiscal impacts under the Proposed Action assume that the rate the MDWS pays to EMI will increase because EMI's per unit operating cost will increase as the fixed costs will be spread out over a lower volume of water diverted and possible higher Water Lease payments to the State compared to historic payments. It is estimated that EMI's operating cost under the Proposed Action would be \$0.068 per kgal, which is higher than the current MDWS payment to EMI of \$0.06 per kgal. The actual rate the MDWS will pay to EMI in 2030 will be subject to a future agreement between the parties. However, for the purposes of the fiscal impacts analysis, the 2030 water service fee rate is estimated to be \$0.10, which has been calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, EMI would receive an estimated \$268,000 in 2030 from the MDWS.

The amount paid to the State Special Land Development Fund for the Water Lease would be based on an appraisal conducted prior to issuance of the Water Lease. Assuming the amount of the Water Lease is based on the equivalent per unit cost under the existing revocable permits, the annual payment to the Special Land Development Fund would be \$846,700. Of this, \$169,300 would be disbursed to OHA and \$254,000 would be set aside for the DHHL. GET revenue would be estimated at \$37,000 while payroll tax would be \$45,400 per year.

However, please note that the above has been revised to take into account the rates charged under the current revocable permits, as approved by the BLNR in November 2020 as shown in pages 4-277 and 4-283.

As it relates to East Maui:

The taro farms and other farms in East Maui that depend on stream flows would produce at full development about 1.0 million pounds per year of taro, and about 400,000 pounds per year of other crops. The resulting direct sales would be about \$1.4 million per year. Indirect sales generated by the purchase of goods and services would be about \$1.5 million per year. Thus, total direct and indirect sales would be about \$2.9 million per year (with rounding), of which about \$2.3 million would be on Maui and \$500,000 on O'ahu. Profits from farm operations and indirect sales would be about \$300,000.

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Full development of the taro farms and other farms in East Maui that depend on stream flows would result in about 14 jobs and generate about 7 indirect jobs, for a total of about 21 jobs. The payroll is expected to reach about \$500,000 for the direct jobs and \$800,000 for all direct and indirect jobs. The direct and indirect jobs provided will support an estimated 47 residents, most of which would be on Maui.

Given the small population of Nāhiku and the lack of commercial land uses, the economic impacts to Nāhiku under the Proposed Action, where water continues to be provided to the community, are considered negligible.

In terms of fiscal impacts, the taro farms and other farms in East Maui that depend on stream flows would generate approximately \$67,000 per year in State taxes at full development. For the County of Maui, property taxes will total about \$100 per year. The City and County of Honolulu will derive about \$300 per year from the excise tax surcharge. Given the small population of Nāhiku and the lack of commercial land uses, the fiscal impacts to Nāhiku under the Proposed Action, where water continues to be provided to the community, are considered negligible.

However, please note that the above has been updated to take into account the updated East Maui farming analysis based on comments received to the Draft EIS as shown in pages 4-288 to 4-293, recognizing modest increases in potential taro and truck farming in East Maui.

As it relates to Upcountry Maui:

Under the Proposed Action it is assumed that MDWS will continue to have access of up to 7.1 mgd through the EMI Aqueduct System. The County of Maui projects that the population in the Upcountry Maui Service Area will grow to approximately 43,700 in 2030, translating to an estimated 16,700 households. Assuming a median household income of \$77,400, households in the Upcountry Maui Service Area are anticipated to have a collective income of \$1.3 billion and consumption expenditures of \$710.0 million. Residential property values within Upcountry Maui are estimated to grow to \$2.7 billion.

Assuming proportional growth in line with population, there will be an estimated 1,100 businesses in Upcountry Maui in 2030, employing 6,700 individuals. Total payroll would be estimated at \$304.9 million, while direct sales associated with

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these businesses would be \$1.1 billion. Commercial property values within Upcountry Maui are estimated to grow to \$180.9 million.

In total, direct sales from residents' consumption expenditures and Upcountry Maui businesses are estimated at \$1.6 billion and residential and commercial property value is approximately \$2.9 billion.

Fiscal impacts to Upcountry Maui arise from the assumption that the MDWS will need to develop 7.95 mgd of new water sources to meet future demands through 2030 (even with the continued supply of 7.1 mgd from the EMI Aqueduct System under the Proposed Action). The Brown and Caldwell analysis indicates that incremental basal wells would be a strategy to meet future demands assuming no reduction in surface water flows. Under the Brown and Caldwell analysis, the life-cycle unit cost of developing and operating wells is \$34 per kgal. It is noted that the life-cycle unit cost to develop new water for Upcountry Maui customers is high. In comparison, a similar analysis conducted for the Central Maui Water System showed a unit cost of less than \$10 per kgal, or less than one third the cost of Upcountry Maui water development (Brown and Caldwell, 2014). The total life-cycle cost for 7.95 mgd of new wells is \$1.2 billion. The life-cycle cost is expressed as the net present value of all the costs incurred over 25 years, including capital, operating, and maintenance costs.

As previously mentioned, the rate that the MDWS pays to EMI will increase by 2030 because it is assumed that EMI's per unit operating cost will increase under the Water Lease. The actual rate the MDWS will pay to EMI will be subject to a future agreement between the two entities. However, for the purposes of this analysis, the 2030 water service fee rate is estimated to be \$0.10, which has been calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, the MDWS would pay an estimated \$268,900 per year to EMI.

Water service rates vary by class of users (i.e., residential, commercial, agricultural, etc.). The average the MDWS water service rate Countywide is \$4 per kgal. Inasmuch as the same water rates are charged across the nine water systems in Maui County, there are many factors that determine the water service rate. Therefore, it is difficult to predict what the water service rate would be in 2030. However, it is noted that the life-cycle unit cost to develop new water for Upcountry customers of \$34 per kgal far exceeds the current average water service rate of \$4 per kgal. It is assumed that the MDWS would seek a variety of

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funding sources to cover the cost to develop new wells. This may include County capital improvement program funds as well as State and/or Federal funds.

Nevertheless, due to the significant cost of new water source development, it would be reasonable to expect that water service rates would increase in the future to offset the costs of new water sources. As noted above, the County's water rate structure is uniform for all customers; water rates are not dependent on the service area a customer is located in (Brown and Caldwell, 2014). Therefore, under the MDWS' current rate structure, the increases would apply Countywide because rates do not vary by service area.

However, please note that the above has been revised to take into account the rates charged under the current revocable permits, as approved by the BLNR in November 2020 as shown in pages 4-277 and 4-283.

As it relates to Central Maui:

At full operations, the Mahi Pono farm plan will cause a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops. Annual sales are expected to reach \$155.9 million. The pastures would support a cattle herd of about 7,300 cow-and-calf animal units, produce over 4,300 calves per year, and generate revenues of about \$4.8 million per year. The solar farm would generate about 82,125 mW of electricity per year, with revenues of about \$8.2 million per year. Combined farm and energy revenues would reach \$168.9 million per year in direct sales (far exceeding the 2006 revenues from sugar production of \$101 million, and the \$116 million average for the 2008 to 2013 period).

Purchases of goods and services by farmers and the families of employees would generate indirect sales and, in turn, these suppliers would generate more indirect sales by their purchase of goods and services. The indirect sales are estimated at about \$160.7 million per year. Total direct and indirect sales would be about \$329.5 million per year, of which about \$273.3 million would be on Maui and about \$56.2 million on O'ahu. Profits from farm operations, energy operations, and indirect sales would be about \$33 million.

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At full operations farm employment is expected to reach about 790 jobs (about 160 more than provided by sugar operations in 2006). The jobs would be typical of those provided by diversified-crop farming and ranching-managing soils and pests, operating and maintaining irrigation systems, planting crops, pruning trees, harvesting crops, sorting and washing crops, packing crops, trucking crops to markets and shipping terminals, moving cattle among pastures, maintaining fences, marketing, accounting, etc.

The purchase of goods and services by farmers and ranchers and by the families of their employees would generate an estimated 350 jobs. In total, about 1,140 direct and indirect jobs would be supported, including about 1,000 jobs on Maui. Payroll is estimated at \$45.3 million for all direct and indirect jobs. The direct and indirect jobs would support an estimated 2,550 residents.

Regarding fiscal impacts at full operations, diversified agricultural operations in Central Maui would generate an estimated \$4.5 million in State tax revenues by 2030. Property taxes paid by to the County of Maui would be about \$800,000 per year, and the City and County of Honolulu would derive about \$140,000 per year from the excise tax surcharge.

However, please note the above has been updated to include a statement about COVID-19 and potential impacts on the economy as it relates to the Proposed Action as shown on page 4-302 of the Final EIS.

Regarding your comment about a public water authority having ownership of the EMI Aqueduct System, please note that Section 3.1.2 of the Draft EIS considered alternative ownership of the EMI Aqueduct System which has been updated in the Final EIS as shown in pages 3-19 to 3-20 to acknowledge the County of Maui, Board of Water Supply Temporary Investigative Group (TIG) Report dated October 17, 2019 that was made available after the publication of the Draft EIS..

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: John and Christel Blumer-Buell <blubu@hawaii.rr.com>
Sent: Wednesday, November 6, 2019 5:51 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: REQUEST FOR TIMELY CONFIRMATION OF RECEIPT. MAHALO! JOHN
Attachments: [A&B Draft EIS for East Maui Stream Leases .pdf](#)

From: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Sent: Thursday, November 7, 2019 11:17 AM
To: John and Christel Blumer-Buell; Public Comment
Subject: RE: 2ND ATTEMPT....Re: REQUEST FOR TIMELY CONFIRMATION OF RECEIPT. MAHALO! JOHN

John

Confirming receipt, thank you for submitting your comments.

Sincerely
Ian Hirokawa

From: John and Christel Blumer-Buell <blubu@hawaii.rr.com>
Sent: Thursday, November 7, 2019 10:48 AM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>; waterleaseeis@wilsonokamoto.com
Cc: John Blumer-Buell <blubu@hawaii.rr.com>
Subject: 2ND ATTEMPT....Re: REQUEST FOR TIMELY CONFIRMATION OF RECEIPT. MAHALO! JOHN

ALOHA,

HAVE NOT RECEIVED CONFIRMATION OF RECEIPT.

PLEASE CONFIRM.....

MAHALO,

JOHN

On Nov 6, 2019, at 5:51 PM, John and Christel Blumer-Buell <blubu@hawaii.rr.com> wrote:

JOHN BLUMER-BUELL
Post Office Box 787, Hana, Hawai'i 96713
Telephone 248-8972 Email blubu@hawaii.rr.com

November 5, 2019

State of Hawai'i Board of Land and Natural Resources (DNLR)
Sent by email c/o Mr. Ian Hirokawa, ian.c.hirokawa@hawaii.gov
with request for confirmation of receipt.

Alexander & Baldwin (A&B) and East Maui Irrigation (EMI)
Sent by email to Wilson Okamoto, waterleaseeis@wilsonokamoto.com
with request for confirmation of receipt.

Subject: A&B Draft EIS for East Maui Stream Leases. Comments, Questions
and Requests for Information.

Aloha Hawai'i Board of Land and Natural Resources, Alexander & Baldwin
and East Maui Irrigation,

REQUEST #1

Request the complete information and disclosure of salinity levels of all
water sources located on property sold to Mahi Pono LLC. Please list by tax map
key numbers (TMK).

Please include specific description of source or sources for each parcel. For
example, if the source is a well, what is the amount of water availability and
pumping capacity? Please include certified and verified information.

This important question came from a discussion I watched between Tom
Blackburn-Rodriguez and Warren Watanabe, Executive Director of the Maui Farm
Bureau on Akaku Television. Warren Watanabe stated (paraphrase) that Maui
Pono LLC would not be able to grow certain crops with the brackish water sources
that were available on the property they purchased. He stated the previous
growing of sugar cane was not negatively impacted by brackish water. This point

of view supported the idea that Mahi Pono LLC needed sources of water that are not brackish.

Did Mahi Pono LLC fully research the salinity (brackish) water issues before purchasing the land upon which they hope to have a successful diversified farming operation?

What legal disclosures did Alexander & Baldwin and East Maui Irrigation make to Mahi Pono LLC regarding brackish water?

Did Alexander & Baldwin and East Maui Irrigation legally disclose to Mahi Pono that the State of Hawai'i has a Public Trust Doctrine in the Constitution regarding water?

“In strong language, the Hawai`i Supreme Court described the public trust doctrine as “the right of the people to have the waters protected for their use [which] demands adequate provision for traditional and customary Hawaiian rights, wildlife, maintenance of ecological balance and scenic beauty, and the preservation and enhancement of the waters . . .”

“For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.”
Quote is from <http://www.hawaiis1000friends.org/public-trust-doctrine.html>

Please reference the Hawai'i State Constitution at <https://www.lwv-hawaii.com/govt/constitution/constitution2.htm> and other sites.

Please discuss the possible use of R1 recycled water for the Mahi Pono LLC farming operations. Why divert water from East Maui when there is an urgent need to recycle and use R1 water in Central and South Maui? A combination of R1 water and large reservoirs or “lakes” might make aquaculture possible, too.

Mahalo!

REQUEST #2

Please list by Tax Map Key (TMK) all land ownership interests sold to Mahi Pono LLC by Alexander & Baldwin and East Maui Irrigation. Please disclose a comprehensive and complete certified title report for each parcel or interest.

Please list by Tax Map Key (TMK) all East Maui Irrigation and Alexander and Baldwin land ownership interests that are related to water diversions, the historic ditch system and any proposed leases. Please disclose a comprehensive and complete certified title report for each parcel or interest.

Mahalo!

REQUEST #3

Request for complete information and disclosure regarding the *“Nāhiku community, which, through the County of Maui Department of Water Supply, draws up 20,000 to 45,000 gallons per day (dependent on weather), directly from the EMI Aqueduct System.”*

This quote is from MAUI BUSINESS ([HTTPS://MAUINOW.COM/CATEGORY/MAUI-BUSINESS/](https://mauiNOW.com/category/maui-business/)) October 7, 2019, 12:29 PM HST , Updated October 8, 11:47 AM, **“Comments on East Maui Water Lease, Draft EIS Due by Nov. 7”**

The article stated, “According to the Draft EIS document, the lease would allow for the continued operation of the EMI aqueduct system to deliver water to the Maui Department of Water Supply for domestic and agricultural water needs in Upcountry Maui. This includes the agricultural users at the Kula Agricultural Park and the planned 262-acre Kula Agricultural Park expansion, *as well as for the Nāhiku community, which, through the County of Maui Department of Water Supply, draws up 20,000 to 45,000 gallons per day (dependent on weather), directly from the EMI Aqueduct System.”*

This definition from Wikipedia states: “An **aqueduct** is a watercourse constructed to carry water from a source to a distribution point far away. In modern

engineering, the term *aqueduct* is used for any system of pipes, ditches, canals, tunnels, and other structures used for this purpose.”

Please describe in detail the complete County of Maui Department system currently serving the Nahiku Community, including maps and tax map keys (TMK).

Is the system supplied by a tunnel or from the East Maui Irrigation “ditch” system? Please describe in detail.

Please describe the current and possible anticipated future expansion or improvement of the entire county system.

Please describe the TWO (2) water tanks in close proximity on opposite sides of the Lower Nahiku Road. Are both tanks County of Maui owned and maintained? If not, please disclose the ownership and water source for the second tank. Is the source for either tank a well? If so, please describe in detail and disclose the well drilling permit and subsequent monitoring reports.

Please understand this is important information for the community because; Makapipi Stream has recently been legally ordered to be permanently re-watered and restored by the Hawai’i State Commission on Water Resource Management. The continued use of the historic “ditch” system between the old Kuhiwa well, Makapipi Stream, Hi’inui Stream (aka: “the unnamed stream”) and Hanawi Stream, including “Big Springs”, would contradict the legal order for re-watering and restoring Makapipi Stream.

Further, the expansion of the County of Maui system serving Nahiku will impact the closely interrelated hydrology of the area. The hydrology reports developed during the “Kuhiwa Well Contested Case Hearing” are useful and educational. There is a clear understanding of the hydrology and interconnectedness of Makapipi Stream, Hi’inui Stream (aka: “the unnamed stream”) and Hanawi Stream, including “Big Springs”.

Does East Maui Irrigation or Mahi Pono LLC want to take ANY water between Makapipi Stream and Hanawi Stream? YES OR NO?

When is EMI legally required to dismantle the entire “ditch” system, including ALL diversions between the old Kuhiwa Well, Makapipi Stream and Hanawi Stream? Would EMI work with the Nahiku Community to dismantle the entire “ditch” system, including ALL diversions, between the old Kuhiwa Well, Makapipi Stream and Hanawi Stream?

Mahalo!

REQUEST #4

Request for comprehensive disclosure and discussion of the possible future of Hanawi Stream. What are the possible plans of East Maui Irrigation and Mahi Pono in relation to Hanawi Stream? What is preferred by the East Maui Community? Is the County of Maui considering the purchase of East Maui Irrigation? Please incorporate the Maui County Board of Water Supply report as part of this Environmental Impact Statement (EIS) process. For information on the 85-page TIG report, visit www.mauicounty.gov/DocumentCenter/View/119847/2019-10-17-TIG-Report. All these factors must be carefully considered.....

In a U.S. National Park Service, U.S. Department of Interior, “Rivers, Hawaii” Report Hanawi Stream was recognized as “Scenic stream flowing through an undeveloped dense forest and over several waterfalls (one drops more than 150 feet). May be the most pristine stream left in the State with cold, clear, spring-fed water and a great diversity of native stream fauna”.

“May be the most pristine stream left in the State” correctly recognizes the value of this stream and habitat. The interrelated “Big Springs” is part of this miracle of creation. Ua Mau ke Ea o ka ‘Āina i ka Pono!

Several important considerations;

The State Commission on Water Resource Management recently ordered a continuous flow of water under the Hanawi Stream bridge to continuously connect the mauka waterway to the makai waterway. This order was to insure that native

species could travel from the mouth of the stream to areas mauka of the bridge through a continuous flow of water. Why was the order needed? **Because the stream mauka of the bridge is being pumped and diverted.**

Please consider alternatives to dewatering and diverting Hanawi Stream. Please remember the statement by the National Park Service.... “May be the most pristine stream left in the State”. It could and should be one of the most pristine streams in the state.

How many gallons per day are currently being pumped out of Hanawi Stream? Please include all historical pumping records, past to present. Please include all historical stream monitoring records, past to present.

Please include all U.S. Geological Survey monitoring records.

I have recently and over many years witnessed no water flowing under the bridge. This is contrary to the State Commission on Water Resource Management order. Hanawi Stream needs to be permanently restored and re-watered. That needs to include removal of electric poles, potentially toxic transformers and electric lines that once serviced Kuhiwa well. Maui Pine installed the poles. Why aren't they responsible for the removal. Who is responsible?

Safety concerns: Uninformed tourists are “trespassing” and swimming every day at the pool directly mauka and Keanae side of the bridge. This certainly appears very dangerous. Is this the pool that is pumped? Can the tourists be “sucked in” to the intake pipe? Please address this issue and the issue of dangerous “rafting” in the ditch system. What is the East Maui Irrigation or Mahi Pono plan?

Let's work and plan together to solve these problem issues. "A'ohe hana nui ke alu 'ia." No task is too big when done together by all.

For Reference. <https://www.nps.gov/subjects/rivers/hawaii.htm>

River: Hanawi Stream

County: Maui

Reach: Headwaters to mouth including the two major source tributaries

Length Description (miles): 10

Description: Scenic stream flowing through an undeveloped dense forest and over several waterfalls (one drops more than 150 feet). May be the most pristine stream left in the State with cold, clear, spring-fed water and a great diversity of native stream fauna.

ORVs: Scenic, Wildlife

Watershed (HUC Code 8): Maui

Year Listed/Updated: 1982

Please consider and comment on two statements adopted in the 1994 Hana Community Plan Ordinance <https://www.mauicounty.gov/DocumentCenter/View/1710/Hana-Community-Plan-1994?bidId=>

“C. Interregional Issues, page 11

Several issues impact the Hana Community Plan region which need interregional, island-wide or County-wide comprehensive policy analyses and formulation.

1. Exportation of resources found within the Hana Community Plan Region. The impacts and implications of exporting resources, particularly the diversion of surface water from the region, are of key concern to Hana residents. The exportation of these resources will not only affect resource availability and environmental integrity within the region, but also affect the balance of resource supply in other community plan regions.

Implementing Actions, page 16

1. In coordination with native Hawaiian residents and community representatives, prepare watershed management plans and a groundwater and surface water resources monitoring program to protect the district's surface and ground waters, and monitor water levels to meet current and future demands.”

Are EMI and Mahi Pono willing to constructively work with and communicate with lineal descendants and all residents in the East Maui Community?

Please inform your comments by reading the Hana Community Plan and recognize the important statement of *ALOHA* in the plan to “Encourage

community-based dialogue regarding proposed land use changes in order to avoid unwarranted conflict”.

Mahalo!

REQUEST #5

Please discuss the potentially negative and/or beneficial impacts of the long term weather forecasts, including global warming, on life on Maui. Particularly, as it relates to water and the Mahi Pono LLC farming plans.....

Mahalo!

REQUEST #6

Please consider and incorporate the “Values” expressed in the Maui Island Plan. <https://www.mauicounty.gov/1503/Maui-Island-Plan>

Mahalo!

Malama Pono!

John Blumer-Buell



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Mr. John Blumer-Buell
P.O. Box 787
Hana, HI 96713

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Blumer-Buell:

Thank you for comments dated November 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: REQUEST #1

Request the complete information and disclosure of salinity levels of all water sources located on property sold to Mahi Pono LLC. Please list by tax map key numbers (TMK).

Response 1: There are ten (10) brackish groundwater wells that serve the Mahi Pono agricultural fields in Central Maui. The reference to 15 brackish wells in the Draft EIS was derived from the Commission on Water Resource Management (CWRM) Findings of Fact (FOF), Conclusions of Law (COL), & Decision and Order dated June 20, 2018 (CWRM D&O), FOF 738, as that was the number of brackish wells that A&B utilized during its sugar cane operations. However, one of the 15 wells referred to, State Well No. 5128-002, does not serve the Central Maui agricultural fields and four of the other brackish wells are on lands that are not owned by Mahi Pono. As such, Mahi Pono has access to only 10 brackish wells. Draft EIS Figure 2-5 (Figure 2-7 in the Final EIS) has been revised, as shown on pages 2-24 to 2-25, to more accurately depict the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields.

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In response to your request for salinity numbers and the Tax Map Key (TMK) numbers for the Mahi Pono wells, please see the table below, which has been added to Section 4.2.2 of the Final EIS as shown in page 4-752.

State Well No.	TMK Number	Installed Pump Capacity (MGD)	Typical Range of Chlorides (MG/L) from 2003 through 2014 ¹	CWRM Delineated Aquifer System
4825-001	(2) 3-8-004:001	20.448	225 to 350	Pā'ia
5226-002	(2) 3-8-006:001	24.048	350 to 550	Kahului
5224-002	(2) 3-8-003:004	15.120	350 to 550	Pā'ia
5323-001	(2) 3-8-001:006	20.016	No data	Pā'ia
5424-001	(2) 3-8-001:007	5.760	400 to 700	Pā'ia
5522-001	(2) 2-5-005:021	8.640	350 to 525	Pā'ia
5422-001	(2) 2-5-005:054	10.080	350 to 525	Pā'ia
5422-002	(2) 2-5-005:020	11.664	325 to 475	Pā'ia
5321-001	(2) 2-5-005:019	30.240	400 to 1600	Pā'ia
5520-001	(2) 2-7-004:032	10.080	900 to 1600	Ha'ikū

Please note that the salinity levels fluctuate and therefore a range was provided.

Comment 2: *Please include specific description of source or sources for each parcel. For example, if the source is a well, what is the amount of water availability and pumping capacity? Please include certified and verified information.*

Response 2: See the table included in Response #1 above for the installed pump capacity of each well. Please note that the Central Maui Field Irrigation System includes water diverted by the EMI Aqueduct System, a system of reservoirs for storage, and 10 brackish water wells that work together to irrigate the approximately 30,000-acre Central Maui agricultural fields as discussed in Section 2.1.4 of the EIS. Section 2.1.4 of the EIS has been revised, as shown in pages 2-24 to 2-25.

As discussed in Section 4.2.2 of the Final EIS, in the past, actual pumping has exceeded the official sustainable yield (SY) of the Central Maui aquifers which the wells are located in because the official SY of the Central Maui aquifers represents the SY under natural conditions, which

¹ There is limited salinity data prior to 2003 and after December 2014, surface water for irrigation use rapidly declined as A&B ramped down operations prior to closing in 2016.

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ignores the significant return irrigation recharge from waters imported from East Maui. Thus, pumping capacity can exceed the official SY of the aquifers. However, taking into account a lower rate of irrigation recharge that will occur as compared to under sugar cultivation, due to less available East Maui stream waters, pumping at less-than-historical-levels will be needed to protect the aquifers.

Hence, water from all the wells can be pumped to the lower elevations in the Central Maui agricultural fields. But please note that under the Mahi Pono farm plan, the supplementation of surface water demands by these brackish wells presents a significant constraint to the viability of the future implementation of diversified agriculture. It is anticipated that no more than approximately 16.47 mgd of brackish groundwater could be used in the Central Maui agricultural fields under the Proposed Action as discussed in Section 2.1.4 of the EIS.

Comment 3: *This important question came from a discussion I watched between Tom Blackburn-Rodriguez and Warren Watanabe, Executive Director of the Maui Farm Bureau on Akaku Television. Warren Watanabe stated (paraphrase) that Maui Pono LLC would not be able to grow certain crops with the brackish water sources that were available on the property they purchased. He stated the previous growing of sugar cane was not negatively impacted by brackish water. This point of view supported the idea that Mahi Pono LLC needed sources of water that are not brackish.*

Response 3: It is acknowledged within the Draft EIS that certain crops cannot be grown using brackish water. You are correct that many crops are not as salt tolerant as sugarcane was. However, excessive use of brackish groundwater also adversely affected sugar yields during Recent Sugar (Years 2008 to 2013). This is mentioned in Sections 2.1.4 and 4.7.4 of the EIS, and in Appendix I, “East Maui Water Lease: Agricultural and Related Economic Impacts”, because of an insufficient supply of surface water:

...a large volume of brackish groundwater was used to irrigate the sugarcane in order to maintain high levels of biomass for energy production, even though the high salinity decreased sugar yields.

It is also stated in Appendix I and in Section 2.1.4 of the Draft EIS that the Central Maui Field Irrigation System has brackish groundwater wells that can supplement surface water to approximately 17,200 acres of the Central Maui agricultural fields at the lower elevations. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water.

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During sugarcane operations, the combined pumping capacity of A&B's 15 brackish water wells was 228 mgd of brackish water, but the true instantaneous pumping capacity of the wells – the most that can be pumped over 3 to 5 days – was 115 mgd during sugar cultivation, after which sump levels started to decline. From 1986 to 2013, A&B pumped an average of 71 mgd from the brackish water wells; during the 2008-to-2013 period, these wells delivered about 70 mgd of brackish groundwater to the lower-elevation fields. This was a suitable source of water for sugarcane during droughts because sugarcane can tolerate periodic use of water with higher salinity levels. However, please note that Section 2.1.4 of the Final EIS regarding the description of the brackish groundwater wells that serve the Central Maui Field Irrigation System has been revised to accurately reflect the number of wells that can serve Mahi Pono, as not all were a part of the sale transaction between Mahi Pono and A&B as shown in page 2-25 and one well does not serve the Central Maui agricultural fields.

Moreover, as discussed in Section 4.7.4 of the EIS, with respect to the Mahi Pono farm plan, because of salinity and the salt tolerance of diversified agricultural crops, which are less salt-tolerant than sugarcane, the use of brackish water on the lower fields is assumed to be limited to about 30% of the water applied. Combining the upper and lower fields, the overall water split across all 30,000 acres would be approximately 80% surface water and 20% brackish groundwater water. If insufficient water is available from the EMI Aqueduct System, then crop farming will have to be reduced no matter how much brackish water is available. Thus, we disagree with your statement that the brackish wells are part of a 'reliable system'. Additionally, the SY of the underlying aquifers as well as the quality of water are uncertain in light of the fact that significantly less recharge from imported East Maui waters will occur. Historically, the sustainable pumping capacity of these wells was highly dependent on irrigation recharge and the positive benefits to the underlying aquifers.

Comment 4: *Did Mahi Pono LLC fully research the salinity (brackish) water issues before purchasing the land upon which they hope to have a successful diversified farming operation? What legal disclosures did Alexander & Baldwin and East Maui Irrigation make to Mahi Pono LLC regarding brackish water? Did Alexander & Baldwin and East Maui Irrigation legally disclose to Mahi Pono that the State of Hawai'i has a Public Trust Doctrine in the Constitution regarding water?*

Response 4: What Mahi Pono knew or researched prior to purchasing the Central Maui agricultural fields, and what disclosures were given by the seller, are beyond the scope of this EIS. Nevertheless, it is understood that Mahi Pono did undertake due diligence before its acquisition, and that it was aware of the importance of the East Maui stream water for best use of the Central Maui agricultural fields (although it should be pointed out that the Draft EIS also includes a variation of the Mahi Pono farm plan to be implemented in the event that no Water

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Lease is issued). It is also understood that the Water Lease will need to be consistent with Hawai'i's Public Trust Doctrine, and the Interim Instream Flow Standards (IIFS) decision issued under the CWRM D&O.

We acknowledge that the Proposed Action (the issuance of a 30-year Water Lease by the Board of Land and Natural Resources (BLNR)), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease. As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action as shown in pages 1-25 to 1-27.

Comment 5: *In strong language, the Hawai'i Supreme Court described the public trust doctrine as "the right of the people to have the waters protected for their use [which] demands adequate provision for traditional and customary Hawaiian rights, wildlife, maintenance of ecological balance and scenic beauty, and the preservation and enhancement of the waters . . ."*

"For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people." Quote is from <http://www.hawaiiis1000friends.org/public-trust-doctrine.html>

Please reference the Hawai'i State Constitution at <https://www.lwvhawaii.com/govt/constitution/constitution2.htm> and other sites.

Response 5: As discussed in Response #4 above, we acknowledge that the Proposed Action (the issuance of a 30-year Water Lease by BLNR), requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the

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streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease. As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action as shown in pages 1-25 to 1-27.

Comment 6: *Please discuss the possible use of R1 recycled water for the Mahi Pono LLC farming operations. Why divert water from East Maui when there is an urgent need to recycle and use R1 water in Central and South Maui? A combination of R1 water and large reservoirs or "lakes" might make aquaculture possible, too.*

Response 6: The availability of the use of reclaimed water from the Wailuku-Kahului Wastewater Reuse Facility (WWRF) is discussed in Draft EIS Section 3.1.1.2 (Reclaimed Water), which provides an analysis of the feasibility of the use of reclaimed water from the Wailuku-Kahului WWRF to irrigate the Central Maui fields. As discussed, the recycled water alternative using existing R-2 water from the Kahului WWRF could be considered an alternative as a supplemental source. However, R-2 quality water has limited usability on crops. Further, the County of Maui Department of Environmental Management (DEM) does not intend to send this R-2 water to the Central Maui agricultural fields. Further consideration of this alternative has been included in Chapter 3 of the Final EIS, which has also been supplemented with a discussion about the potential new reuse/effluent disposal facility in Central Maui to be located south-west of the Kahului WWRF that is being considered by the DEM, as well as a discussion on the feasibility of use of R-1 treated waters. See pages 3-9 to 3-11 of the Final EIS. We note that while using R-1 treated waters is not as restrictive as R-2 waters from an agricultural viability standpoint, using R-1 waters on unprocessed agricultural food crops carries negative stigma from a commercial marketing perspective. Furthermore, the DEM's desired upgrade of the Kahului WWRF to provide R-1 is unfunded and therefore speculative at this time.

Regarding your comment about aquaculture, please note that aquaculture is not a part of the Mahi Pono farm plan. As discussed in Section 2.1.4 of the EIS, the Mahi Pono farm plan consists of the following as shown in Table 2-1 of the Draft EIS (Table 2-2 in the Final EIS):

Table 2-1 Mahi Pono Farm Plan

<i>Proposed Use</i>	<i>Acres</i>	<i>Gallon Per Acre a Day</i>	<i>Surface MGD</i>	<i>Ground water MGD</i>	<i>Total MGD</i>	<i>Annual MGD</i>	<i>% of Total</i>
<i>Community Farm</i>	<i>800</i>	<i>3,392</i>	<i>1.87</i>	<i>0.83</i>	<i>2.70</i>	<i>987</i>	<i>3.28%</i>
<i>Orchards (citrus, mac nuts,</i>	<i>12,850</i>	<i>5,089</i>	<i>53.39</i>	<i>12.04</i>	<i>65.43</i>	<i>23,883</i>	<i>79.48</i>

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<i>beverage crops)</i>							%
<i>Tropical Fruits</i>	600	4,999	2.07	0.87	2.94	1,073	3.57%
<i>Row and Annual Crops</i>	1,200	3,392	3.14	0.95	4.09	1,491	4.96%
<i>Energy Crops</i>	500	3,392	1.18	0.53	1.70	622	2.07%
<i>Pasture, irrigated</i>	4,700	1,161	4.20	1.25	5.46	1,992	6.63%
<i>Pasture, unirrigated</i>	9,100	0	0	0	0.00	0	0.00%
<i>Green Energy</i>	250	0	0	0	0.00	0	0.00%
TOTAL	30,000	2,744	65.86	16.47	82.33	30,047. 77	100.00 %

Please note that the Mahi Pono farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation. All of these things must be considered when developing an evolving and feasible diversified agricultural plan for Central Maui.

Comment 7: REQUEST #2

Please list by Tax Map Key (TMK) all land ownership interests sold to Mahi Pono LLC by Alexander & Baldwin and East Maui Irrigation. Please disclose a comprehensive and complete certified title report for each parcel or interest.

Response 7: Disclosure of all lands sold by Alexander & Baldwin to Mahi Pono and providing a title report for each parcel of such land sold is not within the scope of the EIS. As described in Section 2.1 of the EIS, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water for uses described in the EIS. The environmental impacts of the Proposed Action and alternatives are discussed throughout Chapters 4 and 3, respectively, of the EIS. Please note, however, that identification and ownership of the lands that are the subject of the Proposed Action are identified in Section 1 of the EIS. Specifically, Table 1-1 and Figure 1-2 identifies the TMK numbers for the State-owned lands within the License Area.

Comment 8: *Please list by Tax Map Key (TMK) all East Maui Irrigation and Alexander and Baldwin land ownership interests that are related to water diversions, the historic ditch system*

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and any proposed leases. Please disclose a comprehensive and complete certified title report for each parcel or interest.

Response 8: Please note that the Proposed Action is a request for a water lease to divert water from government-owned lands within the approximately 33,000-acre License Area. See EIS Section 2.1. The location of the License Area is on State-owned lands identified by the Tax Map Key numbers listed in Table 1-1 and Figure 1-2 of the EIS.

Regarding the EMI Aqueduct System, a 1938 Agreement between A&B / EMI (referred to as “the Company”) and the Territory of Hawai‘i, a copy of which has been added to the Final EIS as Appendix R, acknowledges EMI’s ownership of the EMI Aqueduct System. Pursuant to the 1938 Agreement, the Territory of Hawai‘i (now the State) granted perpetual easements to EMI for the placement of the EMI Aqueduct System. See EIS Section 3.3.

Regarding your comment about title reports, please refer to Response #7 above. Providing title reports is not within the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water for uses described in the EIS. The environmental impacts of the potential Water Lease are included throughout Chapter 4 of the EIS.

Comment 9: REQUEST #3

Request for complete information and disclosure regarding the “Nāhiku community, which, through the County of Maui Department of Water Supply, draws up 20,000 to 45,000 gallons per day (dependent on weather), directly from the EMI Aqueduct System.”

Response 9: Regarding your comment about information and disclosure regarding the Nāhiku community, please note that following publication of the Draft EIS, the applicant received additional information from the County of Maui Department of Water Supply (MDWS) regarding the source of the water that services the Nāhiku community. A copy of the MDWS letter is included in Appendix P to the Final EIS. According to MDWS, EMI’s West Makapipi Tunnel 2, Well No. 4806-07, which is also known as the “Nāhiku Tunnel”, is the sole source of water for the MDWS Nāhiku Water Service Area. It is our understanding that EMI developed and owns the Nahiku Tunnel that is the source of the water. Per a 1973 Memorandum of Understanding with EMI and HC&S as amended, MDWS can draw only up to 20,000 gallons of water per twenty-four hour day to serve the Nāhiku community from properties owed by EMI

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and those under license from the State. EMI continues to deliver water to the Nāhiku community pursuant to a 2018 agreement which embodied the 1973 agreement as amended, which is premised upon EMI's continued receipt of permits or a lease from the State BLNR. Even though the agreement provides the MDWS a right to up to 20,000 gpd per twenty-four hour day, EMI has accommodated the needs of the Nāhiku community, which have ranged between approximately 8,345 (2018) to 40,925 (2007) gpd on a daily basis, although supply of amounts over 20,000 gpd on any given day is not required under the agreement. Please note that Section 2.1.3.3 of the Draft EIS, has been revised to take into account clarifications from the MDWS, as shown in pages 2-21 to 2-22 of the Final EIS.

Comment 10: *This quote is from MAUI BUSINESS*

(<HTTPS://MAUINOW.COM/CATEGORY/MAUI-BUSINESS/>) October 7, 2019, 12:29 PM HST, Updated October 8, 11:47 AM, "Comments on East Maui Water Lease, Draft EIS Due by Nov. 7"

The article stated, "According to the Draft EIS document, the lease would allow for the continued operation of the EMI aqueduct system to deliver water to the Maui Department of Water Supply for domestic and agricultural water needs in Upcountry Maui. This includes the agricultural users at the Kula Agricultural Park and the planned 262-acre Kula Agricultural Park expansion, as well as for the Nāhiku community, which, through the County of Maui Department of Water Supply, draws up 20,000 to 45,000 gallons per day (dependent on weather), directly from the EMI Aqueduct System."

Response 10: We acknowledge that your comment above is a direct quote from the article noted in Comment #10 above. Please note that the above quote is consistent with the description of the Proposed Action as stated in Section 2.1 of the Draft EIS. Specifically, Section 2.1 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP

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expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System. It will also allow the continued provision of water to approximately 30,000 acres of agricultural lands (formerly in sugarcane) in Central Maui.

Please refer to Response #9 above and pages 2-21 to 2-22 regarding the changes made to Section 2.1.3 of the Final EIS incorporating the information received from MDWS on the source of the water that services the Nāhiku community, as well as the agreement between EMI and MDWS on the quantity of water supplied to MDWS for use by the Nāhiku community.

Comment 11: *This definition from Wikipedia states: “An aqueduct is a watercourse constructed to carry water from a source to a distribution point far away. In modern engineering, the term aqueduct is used for any system of pipes, ditches, canals, tunnels, and other structures used for this purpose.”*

Response 11: Please note that the above definition is consistent with how the EMI Aqueduct System is defined. The EMI Aqueduct System conveys water from East Maui for uses described in the EIS. Please refer to Response #9 above regarding the agreement between EMI and MDWS on the quantity of water supplied to MDWS for use by the Nāhiku community.

Moreover, as discussed in Section 2.1.2 of the Draft EIS:

The EMI Aqueduct System consists of approximately 388 separate intakes, 24 miles of ditches, and 50 miles of tunnels, as well as numerous small dams, intakes, pipes, 13 inverted siphons and flumes.

Comment 12: *Please describe in detail the complete County of Maui Department system currently serving the Nahiku Community, including maps and tax map keys (TMK).*

Response 12: Please note as discussed in Response #9 above, according to MDWS, the Nāhiku Tunnel is the sole source of water for the MDWS Nāhiku Water Service Area. It is also our understanding that EMI developed and owns the Nāhiku Tunnel that is the source of the water. Per a 1973 Memorandum of Understanding with EMI and HC&S as amended, MDWS was to be able to draw only up to 20,000 gallons of water per twenty-four hour day to serve the Nahiku community from properties owed by EMI and those under license from the State. EMI continues to deliver water to the Nāhiku community pursuant to a 2018 agreement which embodied the 1973 agreement as amended, which is premised upon EMI’s continued receipt of permits or a lease from the State BLNR. Please note that Section 2.1.3.3 of the Draft EIS has been revised to

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take into account clarifications from the MDWS, as shown in pages 2-21 to 2-22 of the Final EIS.

Comment 13: *Is the system supplied by a tunnel or from the East Maui Irrigation “ditch” system? Please describe in detail.*

Response 13: Please note as discussed in Response #9 above, that the Nāhiku Tunnel is the sole source of water for the MDWS Nāhiku Water Service Area. It is also our understanding that EMI developed and owns the Nāhiku Tunnel that is the source of the water. Per a 1973 Memorandum of Understanding with EMI and HC&S as amended, MDWS was to be able to draw only up to 20,000 gallons of water per twenty-four hour day to serve the Nahiku community from properties owed by EMI and those under license from the State. EMI continues to deliver water to the Nāhiku community pursuant to a 2018 agreement which embodied the 1973 agreement as amended, which is premised upon EMI’s continued receipt of permits or a lease from the State BLNR. Please note that Section 2.1.3.3 of the Draft EIS, has been revised to take into account clarifications from the MDWS, as shown in pages 2-21 to 2-22 of the Final EIS.

Comment 14: *Please describe the current and possible anticipated future expansion or improvement of the entire county system.*

Response 14: Your Comment #14 is unclear as to what area / region you are referring to. We are currently unaware of any expansion or improvements planned for the MDWS water systems in Nāhiku and Upcountry Maui.

Comment 15: *Please describe the TWO (2) water tanks in close proximity on opposite sides of the Lower Nahiku Road. Are both tanks County of Maui owned and maintained? If not, please disclose the ownership and water source for the second tank. Is the source for either tank a well? If so, please describe in detail and disclose the well drilling permit and subsequent monitoring reports.*

Response 15: Your comment is not entirely clear as to which water tanks you are referring to. However, MDWS has confirmed that it owns the Lower Nāhiku Tank situated Makai of Hāna Highway along Lower-Nāhiku Road, and two other tanks that are mauka of Hāna Highway. These are depicted on Exhibit D to MDWS’s letter to Akinaka and Associates dated July 24, 2020 and provided as Appendix P to the Final EIS.

Regarding your comment about the permit documentation and monitoring reports for these two water tanks, please note that this is outside the scope of the EIS. Please refer to Response #7 above regarding the scope of the EIS. Any such requests should be directed to MDWS.

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Comment 16: *Please understand this is important information for the community because; Makapipi Stream has recently been legally ordered to be permanently re-watered and restored by the Hawai'i State Commission on Water Resource Management. The continued use of the historic "ditch" system between the old Kuhiwa well, Makapipi Stream, Hi'inui Stream (aka: "the unnamed stream") and Hanawi Stream, including "Big Springs", would contradict the legal order for re-watering and restoring Makapipi Stream.*

Response 16: We acknowledge your comments. Please note that the Proposed Action contemplates that the lessee will fully comply with the CWRM D&O. As discussed in the EIS, the Proposed Action would at maximum divert the amount of water allowed under the CWRM D&O. Thus, the continued use of the EMI Aqueduct System will be in compliance the CWRM D&O.

Regarding Makapipi Stream, you are correct that this stream has been ordered to be fully restored by the CWRM and is discussed in Section 1.3.4 and summarized in Table 1-3 of the Draft EIS. Specifically, Section 1.3.4 of the Draft EIS states:

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138).

Regarding Hi'inui Stream, this is not a stream recognized by CWRM nor is it a recognized stream by EMI. EMI does not have any registered diversions on this stream.

Regarding Hanawī Stream, please note that Hanawī Stream is west of Makapipi Stream, and is diverted by the EMI Aqueduct System downstream of Makapipi. Furthermore, as discussed in Section 1.3.4 of the EIS, the CWRM D&O restored stream flow to Hanawī Stream and categorized it as a "Connectivity Stream." Hence, as specifically discussed in Section 1.3.4 of the Draft EIS:

Water for Streams That Have Barriers to Biological or Ecological Improvements

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula,

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Pa'akea, Pua'aka'a, Puohakamoa, Ha'ipua'ena, Nua'ailua, Waia'aka, and Hanawī. (CWRM D&O, COL 146). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

Hence, the EMI Aqueduct System can divert water from Hanawī Stream after the IIFS has been met. However, please note that the above discussion in Section 1.3.4 of the Final EIS has been revised as shown in pages 1-13 to 1-24 to accurately describe the streams as categorized by the CWRM D&O.

Comment 17: *Further, the expansion of the County of Maui system serving Nahiku will impact the closely interrelated hydrology of the area. The hydrology reports developed during the “Kuhiwa Well Contested Case Hearing” are useful and educational. There is a clear understanding of the hydrology and interconnectedness of Makapipi Stream, Hi'inui Stream (aka: “the unnamed stream”) and Hanawi Stream, including “Big Springs”.*

Response 17: Please note as discussed in Response #14 above that we are currently unaware of any expansion or improvements planned for the MDWS water systems. Moreover, expansion of the County system is under the purview of the MDWS and is outside the scope of this EIS. Please refer to Response #7 above regarding the scope of the EIS. Also note that the flows in Makapipi Stream were ordered to be fully restored pursuant to CWRM D&O

Regarding your comments about the hydrology reports pertaining to the “Kuhiwa Well Contested Case Hearing,” please note that this pertains to the Hāna Aquifer Sector Area and is not relevant to the Proposed Action and is not related to the EMI Aqueduct System. As discussed in Section 4.2.2 of the EIS, the EMI Aqueduct System diverts surface water from the East Maui streams in the License Area, which are located over the Ko'olau Aquifer Sector, and delivers the water to the Central Maui agricultural fields, which are located over the Central Aquifer Sector.

Comment 18: *Does East Maui Irrigation or Mahi Pono LLC want to take ANY water between Makapipi Stream and Hanawi Stream? YES OR NO?*

Response 18: Yes. There are several small tributaries between Makapipi and Hanawī Stream that are diverted by the EMI Aqueduct System. Please note as discussed in Response #16 above that Makapipi Stream is order to be fully restored and that Hanawī Stream is ordered to have restored flow as a “Connectivity Stream.” The EMI Aqueduct System can only divert water at Hanawī Stream (which is downstream of Makapipi Stream) subject to compliance with the CWRM D&O and IIFS.

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Comment 19: *When is EMI legally required to dismantle the entire “ditch” system, including ALL diversions between the old Kuhiwa Well, Makapipi Stream and Hanawi Stream? Would EMI work with the Nahiku Community to dismantle the entire “ditch” system, including ALL diversions, between the old Kuhiwa Well, Makapipi Stream and Hanawi Stream?*

Response 19: EMI is not legally required to dismantle the entire EMI Aqueduct System as it can still divert water from privately owned lands which also use the EMI Aqueduct System for water conveyance regardless of the issuance of the Water Lease as discussed in Section 3.3 of the EIS. Specifically, Section 3.3. of the Draft EIS states:

Under a 1938 agreement between the Territory of Hawai‘i and A&B, A&B was given a perpetual right and easement to convey water through those portions of the EMI Aqueduct System located within State lands, and to divert the water so conveyed through the EMI Aqueduct System, and A&B granted the Territory a similar perpetual right and easement. This agreement is in place irrespective of the issuance of any Water Lease. The No Action alternative would result in no Water Lease being issued from the State. However, under the 1938 agreement and a related calculation involving isohyet analysis of rainfall patterns, it is understood that approximately 30% of the water in the License Area streams is derived from the privately owned lands.

Hence, EMI could continue to divert approximately 30% of the water from the License Area as it is understood that this water is derived from privately owned lands above the License Area.

Moreover, it is recognized by CWRM and discussed in Section 1.3.4 of the EIS that removal of diversion structures is not necessary. Specifically, Section 1.3.4 of the Draft EIS states:

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The CWRM recognized that the stream water that may be leased/licensed by the BLNR from the petitioned East Maui streams may not be sufficient to satisfy the

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full implementation of a diversified agricultural plan for Central Maui. However, the CWRM expected that a sufficient amount of noninstream water would be available to provide the initial phase of allowing lands already designated as Important Agricultural Lands (IAL) under HRS Chapter 205 in Central Maui to be developed for diversified agriculture. (CWRM D&O, COL 152).

The CWRM D&O does not require the removal or modification of every diversion. The CWRM's intent is that diversion structures only need to be modified to the degree necessary to accomplish the IIFS, and not for the complete removal of diversions, unless necessary to achieve the IIFS. The CWRM's intent is to allow for the continued use and viability of the EMI Aqueduct System (CWRM D&O at p. 269).

Comment 20: REQUEST #4

Request for comprehensive disclosure and discussion of the possible future of Hanawi Stream. What are the possible plans of East Maui Irrigation and Mahi Pono in relation to Hanawi Stream? What is preferred by the East Maui Community? Is the County of Maui considering the purchase of East Maui Irrigation? Please incorporate the Maui County Board of Water Supply report as part of this Environmental Impact Statement (EIS) process. For information on the 85-page TIG report, visit www.mauicounty.gov/DocumentCenter/View/119847/2019-10-17-TIG-Report. All these factors must be carefully considered.....

Response 20: Regarding your comment about the possible future of Hanawī Stream, please note as discussed in Response #16 above, that the EMI Aqueduct System can continue to divert Hanawī Stream under the Proposed Action so long as the IIFS for that stream is met. As noted in Response #16, the Hanawī Stream is west of Makapipi Stream and thus diverted downstream of Makapipi Stream.

Regarding your question about what is preferred by the East Maui community, please note that Earthplan conducted the Social Impact Assessment (SIA) included in Appendix G and summarized in Section 4.7.2 of the EIS. The SIA includes input from several East Maui farmers, cultural practitioners, and residents. As discussed in SIA Section 4 (Preliminary Community Issues), as well as Section 4.7.2 of the Draft EIS, seven focus groups were convened in November 2018 and on November 16, 2018, a focus group was held with residents, farmers and cultural practitioners from Ke‘anae and Wailuānuī. Their concerns were presented and discussed in these meetings and are presented and analyzed in Section 4 of Appendix G, and Section 4.7.2 of the Draft EIS. Furthermore, additional meetings were held in April 2019 following the sale of

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A&B lands to Mahi Pono which are also summarized in Section 4.7.2 of the Draft EIS. Specifically, Section 4.7.2 of the Draft EIS states:

“Balance” was a frequent theme among interviewees. They acknowledged that various groups need water originating from East Maui State watershed lands and felt that users should have access to water they truly need. Of note is that, regardless of one’s own interest in the Water Lease, no one wanted water withheld from other groups.

There was disagreement as to the source of water and how the water is allocated. Further, interviewees sometimes felt that A&B’s efforts towards the Water Lease was self-serving and divisive. Nevertheless, people were hopeful that this contentious environment was coming to an end with Mahi Pono as the new owner. Those interviewed expressed willingness to explore options regarding water if community needs, such as local farming / ranching, food self-sufficiency, and so on, can be met.

Hence, those who participated voiced their concerns regarding their own personal needs and access to the water resources but also acknowledged that others also depend on this water. Thus, the Water Lease would need to “balance” all of these needs appropriately.

Regarding your question about the County of Maui considering purchasing the EMI Aqueduct System, please note that Sections 3.1.2 and 3.4 of the Draft EIS considered alternative ownership of the EMI Aqueduct System which has been updated in the Final EIS as shown in pages 3-19 to 3-20 to acknowledge the County of Maui, Board of Water Supply Temporary Investigative Group (TIG) Report dated October 17, 2019 that was made available after the publication of the Draft EIS.

Based upon information obtained to date, County acquisition of the EMI Aqueduct System is purely speculative at this time, however, even if such an action was being advanced by the County, it would not be consistent with the objectives of the Proposed Action as assessed in this EIS. Alternatives to be considered within an EIS must be able to “attain the objectives of the action, regardless of cost.” See HAR Section 11-200-17(f). As explained in EIS Section 1.2 (Objectives of the Proposed Action), in general, the objectives of the Proposed Action (issuance of the proposed Water Lease) are to:

- Preserve and maintain the EMI Aqueduct System, including its access roads and trails
- Continue to meet domestic and agricultural water demands in Upcountry Maui
- Continue to provide water for agricultural purposes in Central Maui (specifically, to allow for the full transition of fields previously used for sugar cane cultivation into new, diversified agricultural uses); and

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- Continue to serve community water demands in Nāhiku

Neither the County's acquisition of the EMI Aqueduct System, nor the County's pursuit of a water lease from the BLNR, are consistent with the objectives of the Proposed Action within the subject EIS. However, the existence of the TIG Report and its findings have been acknowledged in Section 3.1.2 of the Final EIS. Specifically, Section 3.1.2 of the Final EIS has been revised, as shown in pages 3-19 to 3-20.

Comment 21: *In a U.S. National Park Service, U.S. Department of Interior, "Rivers, Hawaii" Report Hanawi Stream was recognized as "Scenic stream flowing through an undeveloped dense forest and over several waterfalls (one drops more than 150 feet). May be the most pristine stream left in the State with cold, clear, spring-fed water and a great diversity of native stream fauna".*

"May be the most pristine stream left in the State" correctly recognizes the value of this stream and habitat. The interrelated "Big Springs" is part of this miracle of creation. Ua Mau ke Ea o ka 'Āina i ka Pono!

Response 21: We acknowledge that this report states the above regarding Hanawī Stream. It is unclear what your comment on "Big Springs" is referring to. As noted on the National Park Service website, the identification of Hanawī Stream as a scenic stream was most recently made in 1982, which was during a period of time when Hanawī stream was subject to diversions to support the sugarcane fields in Central Maui. Specifically, as discussed in Section 2.1.2 of the Draft EIS:

Up until 1986, when the first return of water was made to the East Maui streams, the long-term average delivery by the EMI Aqueduct System was 165 mgd (CWRM D&O, FOF 519) before any use of the water by the MDWS or HC&S.

More recently, as discussed in Response #16 above, Hanawī Stream has stream flow restored pursuant to the IIFS set by the CWRM D&O. In other words, Hanawī Stream will have more water flowing through the stream than it did in 1982. As recognized in the CWRM D&O, a number of waterfalls are located along the lower reaches of the stream, one of which is visible from Hāna Highway. CWRM D&O, FOF 485.

As further discussed in Section 4.9 of the Draft EIS:

Several scenic view planes can be found within the vicinity of the License Area. Specifically, the License Area is located along the slopes of Haleakalā in East

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Maui, and affords views of the ocean to the north and the peak of Haleakalā to the south. The scenic drive along the Hāna Highway was recognized in 2000 when President Clinton designated the Hāna Millennium Legacy Trail. The following year it was listed in the National Register of Historic Places. The drive along Hāna Highway is notable for views of waterfalls, including those in streams flowing out of the License Area. The highway also features waysides, lookouts and trails discussed Section 4.7.1...

No significant impacts on visual resources in the region are anticipated because no new construction or land alteration is planned for the License Area. However, in the short-term, measuring from the current time, where diversions are lower due to the lack of agricultural activity in Central Maui, against the time when Mahi Pono's diversified agriculture needs begin to use the maximum amount of water permitted, there will be a decrease in stream flows and waterfalls that can be viewed along Hāna Highway. However, this expected decrease from the current baseline must be considered in a historical context as well: the impacts to such visual resources under the Proposed Action will be far less than the impacts over the years of sugarcane operations when vastly more water was diverted from East Maui than is planned under the Proposed Action.

However, please note that Section 4.9 of the Final EIS has been expanded to further discuss scenic vistas, cascading waterfalls, and stream flow as shown in pages 4-311 to 4-312 of the Final EIS.

Comment 22: *Several important considerations;*

The State Commission on Water Resource Management recently ordered a continuous flow of water under the Hanawi Stream bridge to continuously connect the mauka waterway to the makai waterway. This order was to insure that native species could travel from the mouth of the stream to areas mauka of the bridge through a continuous flow of water. Why was the order needed? Because the stream mauka of the bridge is being pumped and diverted.

Response 22: Regarding your question about why was the order needed, this is discussed in detail in Section 1.3.4 of the EIS. Specifically, Section 1.3.4 of the Draft EIS states:

On May 14, 2001, A&B requested that the State, pursuant to Hawai'i Revised Statutes (HRS) Section 171-58, offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon State-owned lands at Ko'olau Forest Reserve and Hanawī Natural Area Reserve, Hāna and Makawao,

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Maui, for the purposes of developing, diverting, transporting and using government-owned waters. The requested lease would allow the use of government-owned waters from the License Area. The location of the approximately 33,000-acre License Area is on State-owned land identified by Tax Map Key (TMK) numbers in Table 1-1 and are illustrated in Figure 1-2.

Shortly after the request was made, the Coalition to Protect East Maui Water, Maui Tomorrow Foundation, and Nā Moku Aupuni O Ko'olau Hui (Nā Moku) requested a contested case hearing on the lease matter, thereby delaying BLNR action. In recognition of the request for a contested case hearing, the BLNR deferred action on issuing a lease at public auction, and, in the interim, the BLNR approved a month-to-month holdover of the existing revocable permits...

Separate and apart from the Water Lease process, the Native Hawaiian Legal Corporation (NHLC) on behalf of Nā Moku, Beatrice Kepani Kekahuna, Marjorie Wallet, and Elizabeth Lehua Lapenia (hereafter collectively referred to as "Nā Moku") filed with CWRM 27 Petitions to Amend IIFS for various East Maui streams located within the License Area.

Hence, the CWRM D&O and IIFS occurred due to the petitions filed by Native Hawaiian Legal Corporation on behalf of Nā Moku, Beatrice Kepani Kekahuna, Marjorie Wallet, and Elizabeth Lehua Lapenia. Moreover, as discussed in Response #16 above, Hanawī Stream was categorized as a "Connectivity Stream" and had flow restored to allow for movement of biota. The reasoning for this decision is stated in the CWRM D&O (COL 146.h), which "*Hanawī...is a gaining stream mostly as a result of ground water gains from spring input below the diversion. Hanawī provides excellent instream habitats and a diversity of native stream animals exist in the stream. Little benefit would be achieved from the release of more water past the diversion.*" Connectivity Streams should allow for a minimum connectivity flow across diversion structures to allow for passage of biota upstream.

Regarding your comment about the stream mauka of the bridge, please note that the EMI Aqueduct System has one diversion on from Hanawī Stream but does not pump any stream water from Hanawī Stream.

Comment 23: *Please consider alternatives to dewatering and diverting Hanawi Stream. Please remember the statement by the National Park Service.... "May be the most pristine stream left in the State". It could and should be one of the most pristine streams in the state.*

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Response 23: We acknowledge your comments. Please see Response #22 above, with the citation from the CWRM D&O noting that, even in its diverted state, Hanawā Stream provides excellent instream habitats and a diversity of native stream animals exist in the stream. Please note that under the Proposed Action, Hanawā Stream will be diverted in compliance with the CWRM D&O. However, Sections 3.2.1 and 3.4 of the EIS assess diverting less water than what is estimated to be available under the Proposed Action. Specifically, Section 3.2.1 of the Draft EIS states:

The BLNR cannot authorize a lease that allows the use of more water than can be diverted under the CWRM D&O. However, the BLNR could elect to issue a water lease that authorizes the use of a lesser amount of water. Projections of the amount of government water available from the License Area at Honopou stream after taking into account the CWRM D&O, is approximately 87.95 mgd. This amount would be subject to further reduction in accordance with the DHHL reservation once called upon for use by the DHHL. The CWRM estimated that the amount of water potentially available after implementation of the CWRM D&O might be enough for about 90% of the irrigation needs for the approximately 23,000 IAL lands in Central Maui (although it is not clear if the CWRM D&O took into account the future DHHL reservation). However, there are approximately 30,000 agricultural acres in Central Maui (largely, but not exclusively, IAL lands), and Mahi Pono has expressed an intention to farm as much of that land as possible.

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. Under the Reduced Water Volume alternative, depending on the amount of water authorized under the Water Lease, the MDWS may receive no water from the Wailoa Ditch or some amount up to 7.1 mgd. The greater the reduction in the amount authorized under the Water Lease, proportionally less water will be available to the MDWS.

As discussed in Section 3.4 of the Final EIS as shown on page 3-27, the HSHEP model requires specific diversion conditions at each diversion. Applying the model to the Reduced Water Volume alternative would require information regarding where stream flows are proposed to be increased over the Proposed Action and the amounts. Generally speaking, the more water returned to natural streamflow conditions, the more of an increase in habitat units there would be for native amphidromous species, including native damselfly species. This would likely also improve habitat conditions for a number of introduced predator and competitor species, which could prevent any increases to native species populations.

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Hence, the terms and conditions of the Water Lease are at the discretion of BLNR, and should BLNR elect to place more diversion restrictions on Hanawī Stream, the lessee will comply with these terms and conditions.

Comment 24: *How many gallons per day are currently being pumped out of Hanawi Stream? Please include all historical pumping records, past to present. Please include all historical stream monitoring records, past to present.*

Response 24: Please note that the EMI Aqueduct System does not pump any water from Hanawī Stream. The EMI Aqueduct System only diverts water from Hanawī Stream at one location. Moreover, please note that EMI has 12 gauging stations located in several ditch locations across the License Area to monitor and manage East Maui ditch deliveries. These gauges measure the flow in the ditches only, using a system that includes optical encoders with float tape and data loggers. It is not feasible to measure flow in the streams, as there are limited areas that contain the necessary control points to accurately measure streamflow. EMI's 12 gauging stations includes seven gauges that were formerly operated and maintained by the United States Geological Survey (USGS) to calculate the total amount of water diverted from each of the four sections of the License Area. Those gauges were also in the ditches, not on individual streams. Due to USGS cost cutting, in 1986 EMI took over the responsibility of operation and maintenance of those seven former USGS gauges. At that time, the state began assessing a flat rental fee rather than one based on the specific amount of water collected in each license area. EMI contracts with the USGS to conduct quarterly discharge measurements to verify the accuracy of the gauges at the Honopou boundary of the License Area, which measure the total water withdrawn from the Collection Area.

It is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gauges to wash away. As noted in the CWRM D&O, FOF 50, EMI takes measurements at the boundary of each section of the License Area and at its gauging stations at Maliko Gulch. However, for the purpose of measuring the aggregate flow from entire License Area, the measurements taken at the Honopou boundary were used.

Regarding historical records, as stated in Draft EIS Section 2.1.2:

The system will only divert up to the capacity of the ditches to convey slow moving water along the very slight slopes of the ditches. Up until 1986, when the

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first return of water was made to the East Maui streams, the long-term average delivery by the EMI Aqueduct System was 165 mgd (CWRM D&O, FOF 519) before any use of the water by the MDWS or HC&S. In 2001, the CWRM began the process toward its D&O for several East Maui streams that further changed the amount of water available for delivery to Upcountry Maui and to the Central Maui agricultural fields. Based on these changes to the system, a more recent history of flow deliveries from the EMI Aqueduct System was computed from 1987 to 2006 (20 year time period). When analyzing the delivery data at Honopou Stream and Maliko Gulch, the median (Q50) flow at these areas for this time period was 135.58 mgd at Honopou Stream and 146.64 mgd at Maliko Gulch (Akinaka, 2019).

Furthermore, as stated in Section 2.1.2 of the Draft EIS:

The median flow required by the CWRM D&O provides an estimated available median flow at Honopou Stream of 87.95 mgd, where the EMI Aqueduct System leaves the License Area. Beyond the License Area, the diverted streams only provide supplemental ditch flow when License Area diversions are low. The amount that can be added is relatively low because when rainfall is high in East Maui, the ditches are fuller and there is little needed to supplement the flow. And, when rainfall is low in East Maui, the streams west of Honopou Stream have less flow in them as they are in an area that receives less rainfall than areas further east. During drier (low flow) periods, it is estimated that 4.37 mgd is available to supplement the EMI Aqueduct System between Honopou Stream and Maliko Gulch. With this added flow, the estimated median flow available beyond Maliko Gulch for use in Upcountry Maui and the Central Maui fields is estimated to be 92.32 mgd (Akinaka, 2019).

With the issuance of the Water Lease under the Proposed Action, the EMI Aqueduct System would divert only the maximum allowable amount under the CWRM D&O from streams within the License Area, which is estimated to be approximately 87.95 mgd. The EMI Aqueduct System is estimated to divert an additional 4.37 mgd from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Maliko Gulch. Thus, an estimated total of approximately 92.32 mgd would be conveyed to supply the MDWS for users in Upcountry Maui, Nāhiku, and the agricultural fields in Central Maui.”

Comment 25: Please include all U.S. Geological Survey monitoring records.

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Response 25: Please note as discussed in Response #24 above that USGS used to have gauges at each of the License Area boundaries, however, due to USGS cost cutting, several of those gauges were removed. Currently, USGS only has streamflow gauges within the License Area located along Honopou Stream, West Wailuāiki Stream, and Hanawī Stream according to the following link:

<https://waterwatch.usgs.gov/?m=real&r=hi>

Please note that both Honopou and West Wailuāiki Stream were ordered to be fully restored pursuant to the CWRM D&O. Moreover, Hanawī Stream was also ordered to have flow restored as discussed in Response #16 above.

Regarding your comment to include all USGS monitoring records, it unclear what monitoring records you are requesting. However, please refer to Section 3.3 and Appendices R-1 through R-4 of the Final EIS discussing the reports related to the EMI Aqueduct System submitted as exhibits in the CWRM IIFS proceedings.

Comment 26: *I have recently and over many years witnessed no water flowing under the bridge. This is contrary to the State Commission on Water Resource Management order. Hanawi Stream needs to be permanently restored and re-watered. That needs to include removal of electric poles, potentially toxic transformers and electric lines that once serviced Kuhiwa well. Maui Pine installed the poles. Why aren't they responsible for the removal. Who is responsible?*

Response 26: Your comments are acknowledged. Please note that the CWRM D&O, which was issued in June of 2018 as discussed in Section 1.3.4 of the EIS, after several years of analysis, determined that the most appropriate stream flow for Hanawī Stream at this time is restoring flow as a “Connectivity Stream” as described in Section 1.3.4 of the EIS and page 268 of the CWRM D&O. In making this decision, CWRM considered numerous factors, including without limitation, the stream's value for aesthetic, biological, and recreational purposes. See CWRM D&O at FOF 475-491. Please also note that since A&B ended its sugar operations in 2016, streamflow had increased in many streams as a result of less water being diverted due to the closure of sugar operations. Moreover, as discussed in Response #22, even in its diverted state, Hanawī Stream provides excellent instream habitats and a diversity of native stream animals exist in the stream.

Your comment about the removal of infrastructure related to Maui Land & Pine is outside the scope of this EIS and such infrastructure is not within the applicant's control. Please refer to Response #7 above regarding the scope of this EIS.

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Comment 27: *Safety concerns: Uninformed tourists are “trespassing” and swimming every day at the pool directly mauka and Keanae side of the bridge. This certainly appears very dangerous. Is this the pool that is pumped? Can the tourists be “sucked in” to the intake pipe? Please address this issue and the issue of dangerous “rafting” in the ditch system. What is the East Maui Irrigation or Mahi Pono plan?*

Response 27: Please note that this pool you refer to is well below the License Area and the EMI Aqueduct System does not divert or pump any water at the Hāna Highway in Ke‘anae. Thus, addressing the public safety of this pool is outside the scope of the EIS. Please refer to Response #7 above regarding the scope of the EIS.

Regarding your comment about “rafting” in the EMI Aqueduct System, it is acknowledged that in or around 2007, two teenage individuals illegally trespassed and rafted in one of the EMI Aqueduct System ditches and ended up drifting into a siphon. Please note that siphons (U-shaped pipes) are part of the EMI Aqueduct System, enabling water in the ditches to cross gulches using gravity (the EMI Aqueduct System does not have any pumps or motors) to allow water from one side of the gulch to flow down the side of the cliff, across the bottom of the gulch, and up the other side (and back into a ditch). Since the trespassing incident, EMI has taken many steps to promote ditch safety on Maui, including conducting a safety audit of the EMI Aqueduct System using local and national experts which resulted in a program of ditch improvements (e.g., fencing, physical barriers, signage) in an effort to help prevent future incidents. Safety grates have been installed on all siphons. EMI also intensified its existing school presentation programs, giving in person slide presentations about the EMI Aqueduct System and the dangers of playing in it. EMI initiated a program of print and radio safety ads, focused around school vacation periods. EMI also created the EMI Safety Program, partnering with eight youth clubs across Maui to conduct an annual “Play Hard, Play Safe” campaign, that includes an EMI Safety Selfie contest, that serves to increase Maui youth’s awareness of the dangers of playing in the ditches and on the farm. Notwithstanding these efforts, trespassing cannot be completely controlled. Please note that this discussion has been added to Section 4.8 of the Final EIS as shown in pages 4-305 to 4-309.

As discussed in Sections 3.2.2.2 and 3.4.14 of the EIS, the Modified Lease Area alternative was considered, however, there are concerns that reducing the License Area could result in potentially adverse impacts, such as trespassing in and around the EMI Aqueduct System. To ensure public safety and security of the EMI Aqueduct System, the License Area must include the appropriate buffers. While there is a desire by some, as demonstrated in comments to the Draft EIS, to increase access to other areas within the License Area (i.e., for recreational or cultural access), there remains a need to keep public access away from the EMI Aqueduct

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System itself for safety reasons. Sections 3.2.2.2 and 3.4.14 of the Final EIS have been updated with this discussion as shown in pages 3-21 to 3-24 and page 3-44.

Comment 28: *Let's work and plan together to solve these problem issues. "A'ohe hana nui ke alu 'ia." No task is too big when done together by all.*

Response 28: We acknowledge your comments. Please note that Mahi Pono has conducted community outreach and will continue to do so. Please note that the terms and conditions of the Water Lease are at the discretion of the BLNR and should BLNR make additional consultation a part of the Water Lease, the applicant will comply with all terms and conditions.

Comment 29: *For Reference. <https://www.nps.gov/subjects/rivers/hawaii.htm>*

River: Hanawi Stream

County: Maui

Reach: Headwaters to mouth including the two major source tributaries

Description (miles): 10

Description: Scenic stream flowing through an undeveloped dense forest and over several waterfalls (one drops more than 150 feet). May be the most pristine stream left in the State with cold, clear, spring-fed water and a great diversity of native stream fauna.

ORVs: Scenic, Wildlife

Watershed (HUC Code 8): Maui

Year Listed/Updated: 1982

Response 29: We acknowledge your comments. Please note as discussed in Response #21 above that Hanawī Stream will have more stream flow and will be diverted less under the Proposed Action than it was in past.

Comment 30: *Please consider and comment on two statements adopted in the 1994 Hana Community Plan Ordinance <https://www.mauicounty.gov/DocumentCenter/View/1710/Hana-Community-Plan-1994?bidId=> "C. Interregional Issues, page 11*

Several issues impact the Hana Community Plan region which need interregional, island-wide or County-wide comprehensive policy analyses and formulation.

Response 30: Regarding your comments about the two statements adopted in the Hāna Community Plan is unclear as there are three statements included on Page 11. However, please note that the Hāna Community Plan (1994) is discussed in detail in Section 5.7.1 and Table 5-13

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of the Draft EIS. Specifically, Table 5-13 of the Draft EIS discusses each objective and policy that was adopted by the Hāna Community Plan (1994) as it relates to the Proposed Action.

The three overarching topics on page 11 of the 1994 Hāna Community Plan Ordinance deal with: (1) exportation of resources found within the Hāna Community Plan Region, (2) infrastructure and public services considerations; and (3) population and other socio-economic considerations. As discussed in Section 2.1 of the EIS, the Proposed Action involves the issuance of a water lease that would allow the lessee to divert water from the East Maui streams in accordance with the CWRM D&O and lease conditions. The impacts of the Proposed Action and its alternatives are considered in Chapters 4 and 3, respectively. In particular, the socio-economic considerations of the Proposed Action are discussed in Section 4.7 of the EIS and Appendix G (Social Impact Assessment). Please refer to Response #20 above regarding the scope of and outreach done for the SIA.

Regarding your comment that several issues impact the Hāna Community Plan and need comprehensive policy analyses and formulation, this is outside the scope of the EIS. Please refer to Response #7 above regarding the scope of the EIS. However, please note that Chapter 5 of the EIS discusses the relationship of the Proposed Action to State and County land use plans, policies, and controls.

Comment 31: *In coordination with native Hawaiian residents and community representatives, prepare watershed management plans and a groundwater and surface water resources monitoring program to protect the district's surface and ground waters, and monitor water levels to meet current and future demands."*

Response 31: Regarding your comment about preparing a watershed management plan, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the Final EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" identifies priority outcomes essential to maintaining or restoring biological integrity, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and

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controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Regarding your comment about groundwater and surface water resources monitoring programs, please note that the terms and conditions of the Water Lease are at the discretion of BLNR, and should BLNR make this a part of the Water Lease, the lessee will comply with all terms and conditions. Please refer to Response #24 above regarding EMI's gauging of ditches in the License Area however, stream gauging and monitoring lays within the expertise the CWRM and the USGS.

Comment 32: *Are EMI and Mahi Pono willing to constructively work with and communicate with lineal descendants and all residents in the East Maui Community?*

Response 32: Yes, please note as discussed in Response #28 above that EMI and Mahi Pono have conducted community outreach as part of the EIS process and will continue to do so. Furthermore, the SIA recommendations, as presented in Section 4.7.2 of the EIS are as follows:

Two areas of mitigative measures are recommended for consideration, should the proposed Water Lease be granted by the BLNR. These measures are intended to establish an ongoing working relationship between the community, Mahi Pono and EMI, and related public agencies, as well as continue resolution with East Maui communities.

It is recommended that interest groups, or stakeholder groups, are clearly defined so that there is recognition of who will be affected by the proposed Water Lease. Groups should include geographic communities, environmental, agriculture and business interests, and public agencies. Each group would be encouraged to reach consensus on their own needs, concerns, opportunities and possible solutions.

A starting point for identifying stakeholder groups could be the interviewees and focus group participants that participated in Earthplan's SIA and their networks.

It is recommended that interest groups are equitably represented in a "Core Working Group" that would serve as a forum for exchanging ideas and collaborative efforts, as well as provide feedback and suggestions to Mahi Pono. Each member of the Core Working Group would be expected to reach out to their own networks to extend the discussion beyond the Core Working Group. While

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there would likely be strong differences in perspectives and opinions, the Core Working Group would need to find ways to establish core principles, common ground and manageable solutions.

The fundamental value that will help bring people to the same table is trust. The proposed Water Lease has elicited skepticism and distrust over many decades, and these feelings prevent willingness for participating in mediation and collaboration. While developing trust among the various groups will be challenging, the first step is transparency. Being open about intent, plans, and activities can begin to establish credibility and open the door to dialogue.

Hence, it is recommended that community outreach continue to occur under the Proposed Action. Please note that the terms and conditions of the Water Lease are at the discretion of the BLNR and should BLNR make this a part of the Water Lease, the applicant will comply with all terms and conditions.

Comment 33: *Please inform your comments by reading the Hana Community Plan and recognize the important statement of ALOHA in the plan to “Encourage community-based dialogue regarding proposed land use changes in order to avoid unwarranted conflict”.*

Response 33: We acknowledge your comments. Please note as discussed in Response #30 above that the Hāna Community Plan (1994) is discussed in detail in Section 5.7.1 and Table 5-13 of the Draft EIS. Specifically, Table 5-13 of the Draft EIS discusses each objective and policy that was adopted by the Hāna Community Plan as it relates to the Proposed Action. As discussed above in Response #32, ongoing consultation has been recommended for the Proposed Action.

Comment 34: REQUEST #5

Please discuss the potentially negative and/or beneficial impacts of the long term weather forecasts, including global warming, on life on Maui. Particularly, as it relates to water and the Mahi Pono LLC farming plans.....

Response 34: The EIS includes the most recent information regarding climate change within its analysis. As discussed in Section 4.3.1 of the Draft EIS:

Regular trade winds are key in driving the Hawai‘i’s hydrological cycle, generating rainfall which helps maintain Maui’s water supply. However, a recent study showed that Hawai‘i’s trade winds have decreased in frequency by approximately 30% over the past 37 years, from 291 days per year in 1973, to

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210 days per year in 2009 (Garza et. al, 2012). The decrease in the trade winds could have serious implications for the Hawaiian Islands, including adversely impacting local agriculture, native ecosystems and endangered species, and the State's limited freshwater supply.

Overall, the State of Hawai'i is experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014)...

Regarding East Maui:

Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. Such rainfall patterns increase the amount of stormwater runoff flowing through the region, including through the streams within the License Area that reach the shoreline. The expected climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. (SE & MRC, 2019).

Regarding Upcountry Maui:

Upcountry Maui covers a large range of elevation and area. The average temperature varies at different elevations. As elevation increases, the average temperature decreases. The Leeward side of Upcountry Maui is mostly dry and sunny. The Windward Side of Upcountry Maui tends to be wetter than the Leeward Side. Average annual rainfall ranges from 16-20 inches per year on the Leeward Side to more than 240 inches per year on the Windward Side (Draft Maui Island Water Use and Development Plan, March 2019). The KAP receives an average amount of total rainfall of 15 to 25 inches per year.

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Climate change trends may increase the potential for altered habitats and conditions. Warming air temperatures could cause ecosystems to shift upslope and decline in size. Changes in precipitation may affect Upcountry Maui's ecosystems and communities include flooding, erosion, drought, and fire. Changes vary from island to island, and even valley to valley. The overarching trend for the State has been a decrease in total rainfall. A decrease in total rainfall, without a reliable source of water delivery, would increase the demand for water in Upcountry Maui for both domestic and agricultural purposes. The demands of water could be potentially minimized through the implementation of water conservation measures, however, the extent to which such efforts would serve to counter reduced levels of water service is uncertain.

Regarding Central Maui:

Central Maui's climate is typical of Leeward coastal lowlands receiving little rainfall annually, and is relatively dry. The northeast areas receive more rain than the central and southern areas of Central Maui. The average annual rainfall ranges from less than 10 inches in the southern part of the isthmus to over 40 inches in the northeastern areas. Central Maui receives considerable amounts of sunshine, with average daily insolation ranging from slightly less than 450 calories per square centimeter per day in mauka areas to over 500 calories near Kahului.

Climate change trends may suggest an increased potential for the agricultural fields in Central Maui to experience longer, more intense, periods of drought. The overarching trend for the State has been a decrease in total rainfall. A decrease in rainfall would result in less water being conveyed to the agricultural fields. The water conveyed to the agricultural fields in Central Maui also plays a major role in the recharge of the Central Maui aquifer. Periods of prolonged and intense drought would further strain the aquifers in Central Maui that depend upon the water conveyed through the EMI Aqueduct System for recharge.

Note that Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown in pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Hence, the EIS recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides,

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severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). It is therefore anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall. However, as noted in the USGS report cited in pages 4-89 to 4-90 of the Final EIS, East Maui could see an increase in rainfall due to future climate change trends.

Particularly as it relates to the Mahi Pono farm plan, as stated in Section 4.3.1 of the Draft EIS:

However, the exact nature of how the climate will change and impacts from any changes is unknown. As research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies for climatic changes.

Thus, as more information becomes available regarding climate change and its impacts, adaptation strategies may need to be developed and or implemented in the future.

Comment 35: REQUEST #6

Please consider and incorporate the “Values” expressed in the Maui Island Plan.
<https://www.mauicounty.gov/1503/Maui-Island-Plan>

Response 35: Your Comment #35 above is unclear as to what "values" you are referring to. However, as discussed in Response #30 above, Chapter 5 of the EIS discusses the relationship of the Proposed Action to State and County land use plans, policies, and controls, which also includes the Maui Island Plan.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.² Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

² Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: john meier <johnrmeier@yahoo.com>
Sent: Friday, November 1, 2019 11:58 AM
To: ian.c.hirokawa@hawaii.gov
Cc: Public Comment
Subject: Comments on East Maui Water Lease - Draft EIS

Aloha Ian Hirokawa,

This email contains my comments on the East Maui Water Lease Draft EIS.

I am a full-time resident of Maui and an avid hiker. My hiking group has 8 people and we average 15 miles a week. The Ko'olau Forest Reserve is a wonderful place and has some of the best hiking anywhere in the world.

My comments are focused on protecting public access to the Ko'olau Forest Reserve. East Maui Irrigation has a long history of trying to improperly block public access and I believe this issue can be solved in the new water lease. Currently, EMI instructs their employees to say that the Ko'olau Forest Reserve is EMI private property and that anyone who goes in the Ko'olau Forest Reserve will be arrested for trespassing.

1) The draft EIS is incomplete because it does not include an inventory of roads and trails in the Ko'olau Forest Reserve.

HRS 264 (Public Highways and Trails) protects public right-of-way on roads and trails owned by the state. When the Ko'olau forest reserve was created, all roads and trails in the forest reserve became protected rights-of-way. The draft EIS needs to be extended to show the protected roads and trails in the Ko'olau Forest Reserve.

HRS 171-35 (Lease provisions) requires leases to protect rights-of-way and access to other public lands. The draft EIS needs to be extended to show how the proposed water lease protects rights-of-way and access to other public lands.

The Hawaii Supreme Court has ruled (1908 19 H. 168) that the lease of public land can not affect a public right-of-way existing across it.

2) The draft EIS is incomplete because it does not include an inventory and history of roads and trails on East Maui Irrigation land.

HRS 264 (Public Highways and Trails) requires that historic roads and trails are protected rights-of-way. The draft EIS needs to be extended to show which historic roads and trail are protected.

HRS 115 (Public Access to Coastal and Inland Recreational Areas) requires public rights of way to be provided at reasonable intervals to inland recreational areas. Many parts of the Ko'olau Forest Reserve are land-locked by East Maui Irrigation property. The draft EIS needs to be extended to show public rights-of- way across EMI property to the Ko'olau Forest Reserve.

3) I support the position of the Division of Forestry and Wildlife in their December 19 2016 letter, included in the draft EIS. Specifically, I support:

“Thus the Division recommends that the areas to be conveyed for a water license be done so through a land agreement that is limited to the infrastructure required for maintenance and conveyance of water, and that any terms of any agreement established for the delivery of water ensure unrestricted public access to the reserves and any state owned roads and trails”

Mahalo,

-John Meier
3600 Wailea Alanui Dr Apt 305
Kihei, HI 96753



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 CORPORATION
 INNOVATORS • PLANNERS • ENGINEERS

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Mr. John Meier
 3600 Wailea Alanui Drive, Apt. 305
 Kihei, HI 96753
 johnrmeier@yahoo.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Meier:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am a full-time resident of Maui and an avid hiker. My hiking group has 8 people and we average 15 miles a week. The Ko'olau Forest Reserve is a wonderful place and has some of the best hiking anywhere in the world.*

My comments are focused on protecting public access to the Ko'olau Forest Reserve. East Maui Irrigation has a long history of trying to improperly block public access and I believe this issue can be solved in the new water lease. Currently, EMI instructs their employees to say that the Ko'olau Forest Reserve is EMI private property and that anyone who goes in the Ko'olau Forest Reserve will be arrested for trespassing.

Response 1: We acknowledge your comments and understand that you an avid hiker. Please note that Public Access has been regulated, in partnership with the Department of Land and Natural Resources, by EMI for decades. EMI assumes liability for unlawful access into the License Area, thus restricting access protects EMI. Public access to the License Area, including the Forest Reserve lands, is currently limited to permitted access by hunting groups and hiking

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clubs as discussed in Section 4.8 of the EIS. Access to the Ko‘olau Forest Reserve Hunting Units, which include portions of the Huelo, Honomanū, Ke‘anae, and Nāhiku License Areas, is managed by the Department of Land and Natural Resources (DLNR) Division of Forestry and Wildlife. In order to hunt in these areas, hunters must first obtain a license from the DLNR and an EMI Permit/Waiver. Access to the hunting units is managed by EMI through eight existing access roads. Hunters are permitted to enter the areas by vehicle but must traverse most areas by foot. Hiking is also a permitted recreational use within the License Area and is limited to hiking clubs. Hiking access requires a Hiking Waiver form EMI.

Access to the License Area is limited for the safety of entrants. For hunters, hunting grounds are limited to one hunting party per hunting area, as regulated by the DLNR. The hiking groups that currently access the License Area, Sierra Club Maui Group and Mauna Ala Hiking Club, enter the License Area by foot and are guided by a club hiking expert with a manageable number of people, however, access is not limited to these two clubs. Any hiking clubs wishing to access the License Area must follow the same procedures. However, limiting access to the License Area also limits potential impacts to historic properties and natural resources

Increased public access has the potential to pose a greater impact to historic properties and the environment, especially if public access is unmanaged. Recently, concerns for these impacts have prompted visitor limitations to the culturally significant Hā‘ena State Park on the north shore of Kaua‘i. Potential impacts from unmanaged access could include looting and “rock-robbing” of surface and subsurface historic properties, littering, harvesting of archaeologically associated flora such as *ti* (*Cordyline fruticosa*), trampling or erosion from pedestrian/vehicular access, and unpermitted ground disturbance. Significant impacts to historic properties as a result of unmanaged access have been documented elsewhere in the State.

Moreover, Section 3.2.2.2 of the EIS, “Modified Lease Area”, discusses what is needed to provide appropriate buffers to ensure public safety and the security of the system to allow for more public access into the License Area.

Regarding your comment that "EMI instructs their employees to say that the Ko'olau Forest Reserve is EMI private property and that anyone who goes in the Ko'olau Forest Reserve will be arrested for trespassing," EMI's understanding is that the most popular access points to the Ko‘olau Forest Reserve are [believed to be] owned by EMI. Therefore, EMI assumes liability for those access points. Thus, restricting access to the general public through areas that are owned by EMI/A&B is necessary.

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Comment 2: *The draft EIS is incomplete because it does not include an inventory of roads and trails in the Ko'olau Forest Reserve. HRS 264 (Public Highways and Trails) protects public right-of-way on roads and trails owned by the state. When the Ko'olau forest reserve was created, all roads and trails in the forest reserve became protected rights-of-way. The draft EIS needs to be extended to show the protected roads and trails in the Ko'olau Forest Reserve.*

Response 2: The Draft EIS included suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps. See Draft EIS Figures 4-28 (East Maui Flood Insurance Rate Map) and 4-2 (USGS East Maui Topography Map), as well as numerous other figures and maps. Requirements, if any, under HRS Chapter 264 (Highways) are outside of the scope of an assessment of environmental impacts under HRS Chapter 343. With regard to the historic trails and roads that are within the License Area, Section 4.5 of the Final EIS as well as Appendix E (Archaeological Literature Review and Field Inspection) have been revised to include the current inventory of roads and trails in the License Area as shown in pages 4-147 to 4-149. CSH completed a geographic analysis of trails and roads that appear within the License Area as depicted on maps between 1869 and 1992 and available to the public domain. The majority of roads and trails within the License Area are associated with access to the EMI Aqueduct System and these road and “ditch trails” are likely contemporary with the construction of the EMI Aqueduct System.

Figure 4-39 has been added to the Final EIS to correspond with the above text (Figure 48 in Appendix E).

Furthermore, the various public recreational facilities, hiking trails, and hunting areas in the License Area, including access points, are identified in Section 4.8 of the EIS and Figures 4-37 and 4-38 of the Draft EIS (Figure 4-40 and 4-41 in the Final EIS). However, please note that Section 4.8 of the Final EIS has been updated to include more recreational facilities and an accurate discussion regarding access into the License Area as it relates to recreational activities as shown in pages 4-305 to 4-309.

Comment 3: *HRS 171-35 (Lease provisions) requires leases to protect rights-of-way and access to other public lands. The draft EIS needs to be extended to show how the proposed water lease protects rights-of-way and access to other public lands.*

The Hawaii Supreme Court has ruled (1908 19 H. 168) that the lease of public land can not affect a public right-of-way existing across it.

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Response 3: HRS § 171-35 does not require a lessee to protect rights of way and access to other public lands. To the extent that HRS § 171-35 (Lease provisions; generally) applies to a water lease, it gives the BLNR discretion on whether and how to address reservations of rights of way and access to other public lands. The section of the law you cited provides as follows:

Every lease issued by the board of land and natural resources shall contain:

- 1. The specific use or uses to which the land is to be employed;*
- 2. The improvements required; provided that a minimum reasonable time be allowed for the completion of the improvements;*
- 3. Restrictions against alienation as set forth in § 171-36;*
- 4. The rent, as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;*
- 5. Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and*
- 6. Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the state constitution and of this chapter.*

The issue in the case you cited from the Supreme Court of the Territory of Hawai‘i, *Robello v. Maui Cnty.*, 19 Haw. 168 (1908) was whether the easement of the public in an existing highway was extinguished by a lease to a private party when a new road was planned at some time in the future. The Court held that the lessee took his lease with full knowledge of the existing highway due to the reference on the map and actual knowledge of the existence of the road and was therefore not allowed to erect fences blocking the old road. The Court further held that no injunction should have been granted restraining the County from removing lessee's fences to keep the public road open. This case is not applicable to the proposed Water Lease.

A new condition included in the 2020 and 2021 water revocable permits required the removal of the Hanawā NAR from the revocable permit area and calls for A&B to continue discussions with DOFAW to identify additional forest reserve lands to be removed from the License Area. The Hanawā NAR consists of approximately 7,500 acres and is further discussed in Section 1.3.1 of the Final EIS as shown on page 1-2 of the Final EIS. It should be noted that no portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the revocable permit area will result in additional public access because the NAR

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rules restrict public access. However, this may not be true for other areas that DOFAW may want the BLNR to withdraw from the License Area going forward.

Comment 4: *The draft EIS is incomplete because it does not include an inventory and history of roads and trails on East Maui Irrigation land.*

HRS 264 (Public Highways and Trails) requires that historic roads and trails are protected rights-of-way. The draft EIS needs to be extended to show which historic roads and trail are protected.

Response 4: As noted above in Response #2, Section 4.5 of the Final EIS, as well as Appendix E (Archaeological Literature Review and Field Inspection), have been revised to include the current inventory of roads and trails in the License Area as shown in pages 4-147 to 4-149. CSH completed a geographic analysis of trails and roads that appear within the License Area as depicted on maps between 1869 and 1992 and available to the public domain. The majority of roads and trails within the License Area are associated with access to the EMI Aqueduct System and these road and “ditch trails” are likely contemporary with the construction of the EMI Aqueduct System.

Comment 5: *HRS 115 (Public Access to Coastal and Inland Recreational Areas) requires public rights of way to be provided at reasonable intervals to inland recreational areas. Many parts of the Ko'olau Forest Reserve are land-locked by East Maui Irrigation property. The draft EIS needs to be extended to show public rights-of- way across EMI property to the Ko'olau Forest Reserve.*

Response 5: We acknowledge your comment regarding HRS Chapter 115, but we do not view this statute as applicable to the environmental review required under HRS Chapter 343. HRS § 115-2 (Acquisition of lands for public rights-of-way and public transit corridors) provides "When the provisions of section 46-6.5 are not applicable, the various counties shall purchase land for public rights-of-way to the shorelines, the sea, and inland recreational areas, and for public transit corridors where topography is such that safe transit does not exist." The County of Maui has not purchased a public right-of-way from the State or from EMI. Moreover, the provisions of HRS § 46-6.5 are not applicable. That section of the law applies when there is a subdivision into six or more lots, parcels, units, or interests. No subdivision is contemplated in connection with the proposed Water Lease. In any event, public access within portions of the License Area has been provided, as discussed in Section 4.8 of the Draft EIS, and it is expected either that public access will continue if the scope of the License Area remains the same, or, if the License Area is reduced, that public access within the former License Area lands will be dictated by a State agency. However, please note that Section 4.8 of the Final EIS, as noted in Response #2,

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has been revised as shown in pages 4-305 to 4-309 to include more recreational facilities and an accurate discussion regarding access into the License Area as it relates to recreational activities.

Comment 6: *I support the position of the Division of Forestry and Wildlife in their December 19 2016 letter, included in the draft EIS. Specifically, I support:*

“Thus the Division recommends that the areas to be conveyed for a water license be done so through a land agreement that is limited to the infrastructure required for maintenance and conveyance of water, and that any terms of any agreement established for the delivery of water ensure unrestricted public access to the reserves and any state owned roads and trails”

Response 6: Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access to areas that are not within the License Area. Please also see Response #3 regarding the revised License Area under the most recent revocable permits and projections related to the geographical extent of the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown in pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding impacts to the areas that would allow for more public access. Moreover, impacts of the Modified Lease Area alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Jordan Tabura <jordantabura@gmail.com>
Sent: Thursday, November 7, 2019 12:42 PM
To: lan.c.hiokawa@hwaii.gov
Cc: Public Comment
Subject: Comments on DEIS

To Mr. Earl Matsukawa,

Aloha and Mahalo for taking your time to accept my comments on the Draft EIS for the Proposed Water Lease for the Nahiku, Keanae, Honomanu, and Huelo License Areas.

I am a Haiku resident, kalo farmer, hunter, and fisherman who gathers from East Maui.

The Draft EIS needs to include the following information:

The importance of mauka to makai streamflow for our fisheries to thrive. Evidential studies show that when there is mauka to makai connectivity, that is when the fisheries are most abundant in marine aquatic life which is especially important for our native species. The DEIS needs to include the information on the fact that most East Maui streams have been allowed to flow for the past two years since HC&S closed which resulted in increased water flow and stream life. The EIS needs to discuss his diverting those streams for Mahi Pono farming would impact East Maui ecosystems and communities.

We gather within the 16 sq mi from Honopou to Maliko Gulch. These are the areas the DEIS states there are no impacts from diverting water which is false.

I humbly ask that the DEIS include this important information. Mahalo for this opportunity to submit comments on this Draft EIS.

Aloha no,

Jordan Tabura, resident of Haiku, Maui, Hawaii.

Sent from my iPhone

From: Jordan Tabura <jordantabura@gmail.com>
Sent: Thursday, November 7, 2019 1:43 PM
To: ian.c.hiokawa@hawaii.gov
Cc: Public Comment
Subject: Comments on DEIS

> To Mr. Earl Matsukawa,
>
> Aloha and Mahalo for taking your time to accept my comments on the Draft EIS for the Proposed Water Lease for the Nahiku, Keanae, Honomanu, and Huelo License Areas.
>
> I am a Haiku resident, kalo farmer, hunter, and fisherman who gathers from East Maui.
>
> The Draft EIS needs to include the following information:
>
> The importance of mauka to makai streamflow for our fisheries to thrive. Evidential studies show that when there is mauka to makai connectivity, that is when the fisheries are most abundant in marine aquatic life which is especially important for our native species. The DEIS needs to include the information on the fact that most East Maui streams have been allowed to flow for the past two years since HC&S closed which resulted in increased water flow and stream life. The EIS needs to discuss his diverting those streams for Mahi Pono farming would impact East Maui ecosystems and communities.
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> We gather within the 16 sq mi from Honopou to Maliko Gulch. These are the areas the DEIS states there are no impacts from diverting water which is false.
>
> I humbly ask that the DEIS include this important information. Mahalo
> for this opportunity to submit comments on this Draft EIS.
>
>
> Aloha no,
>
> Jordan Tabura, resident of Haiku, Maui, Hawaii.
>
>
> Sent from my iPhone



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Jordan Tabura
jordantabura@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jordan Tabura:

Thank you for your comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Aloha and Mahalo for taking your time to accept my comments on the Draft EIS for the Proposed Water Lease for the Nahiku, Keanae, Honomanu, and Huelo License Areas.*

I am a Haiku resident, kalo farmer, hunter, and fisherman who gathers from East Maui.

Response 1: We acknowledge your comments and understand that you are a Ha‘ikū resident, kalo farmer, hunter, and fisherman who gather from the East Maui region. Please note that we provide detailed responses to each of your points below.

Comment 2: *The Draft EIS needs to include the following information:*

The importance of mauka to makai streamflow for our fisheries to thrive. Evidential studies show that when there is mauka to makai connectivity, that is when the fisheries are most abundant in marine aquatic life which is especially important for our native species.

Response 2: It is generally known that flow from mountain to ocean can provide environmental benefits. Impacts to stream flow and stream life as a result of diversions were assessed in the

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Draft EIS Section 4.2.1. The HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to help decision-makers determine an appropriate balance between instream and offstream water uses. The mauka to maikai connection is integral to the design of the HSHEP model in estimating the impacts of stream diversions on native species habitat. Impacts to stream habitats and native amphidromous stream species, are analyzed in Section 4.2.1 and Appendix A of the EIS.

Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

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The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83 of the Final EIS.

Comment 3: *The DEIS needs to include the information on the fact that most East Maui streams have been allowed to flow for the past two years since HC&S closed which resulted in increased water flow and stream life. The EIS needs to discuss his diverting those streams for Mahi Pono farming would impact East Maui ecosystems and communities.*

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Response 3: Regarding your comment that increased flow since the cessation of sugarcane operations in Central Maui has resulted in increased water flow and stream life is acknowledged. Please note that many people at the EISPN public scoping meetings on February 22nd and 23rd, 2017 testified noting positive impacts seen from increased stream flow resulting from the cessation of sugar operations, please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See page 4-168 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. This is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSHEP model estimated that approximately 79.8% of total HU would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected under the No Action alternative.

Please note with regards to your comment that the EIS needs to discuss the impacts of the Proposed Action, this is discussed in detail in Chapter 4 of the EIS. Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture,

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traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown in pages 4-331 to 4-336.

Comment 4: *We gather within the 16 sq mi from Honopou to Maliko Gulch. These are the areas the DEIS states there are no impacts from diverting water which is false.*

Response 4: We acknowledge that you gather within the area from Honopou Stream (western end of the License Area) and Māliko Gulch. Please note that this area is outside the License Area. Please note that as discussed in Section 2.1.2 of the Draft EIS, under the Proposed Action, at full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd will be diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs. Regarding your comment that the Draft EIS states that no impacts are anticipated in this area under the Proposed Action as this area is anticipated to be diverted as it has been for over a century. Hence, the existing conditions are anticipated to remain similar and not change.

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Comment 5: *I humbly ask that the DEIS include this important information. Mahalo for this opportunity to submit comments on this Draft EIS.*

Response 5: Please note that we provided detailed to your responses above. Thank you for your participation in this EIS process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beauprez

From: KC Productions <jkalai.kauihou@gmail.com>
Sent: Thursday, November 7, 2019 11:57 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: A&B EIS

Please accept my comments for the EIS submitted by A&B for the 30 year lease on the East Maui ditches.

My name is Joyclynn Costa. I am a lineal descendant from Nahiku that has kuleana to Makapipi river.

A&B's EIS needs to include how they will operate in accordance to the Hawaii State water code particularly pertaining to kuleana rights and usage in the last section.

A&B's EIS needs to include acknowledgement of the kuleana being done currently and for future use for the ohana that are there as well as room for those contemplating, knowing that the waters are coming back, that are coming home to again create food on their kuleana.

The commission needs to include better and specific use of the ditch which should be how and in what condition they can proceed with any type of contract. Surrounding land should not be included only the ditch and the roads to access.

A&B needs to include a different plan of action to malama the ditch system and should not be allowed to continue operations as they have been which devastated and destroyed vast amounts of resources that caused injury to a people of kuleana.

A&B needs to include on each committee or management team someone from the community of the different Moku and Ahupua`a to ensure what is being done to our resources.

Mahalo for your consideration

Joyclynn Costa
po box 777
Haiku 96708



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September 3, 2021

Ms. Joyclynn Costa
P.O. Box 777
Haiku, HI 96708
Jkalah.kauihou@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Costa:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *My name is Joyclynn Costa. I am a lineal descendant from Nahiku that has kuleana to Makapipi river.*

Response 1: We acknowledge your comments and understand that you are a lineal descendent from Nāhiku and have a kuleana to Makapipi Stream. Please note that Makapipi Stream was one of the streams subject to the 2018 CWRM D&O and was ordered to be fully restored as it was identified as valued for taro farming. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi‘ina‘au, Palauhulu, Waiokamilo, Wailuānui, ‘Ōhi‘a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to

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the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

Comment 2: *A&B's EIS needs to include how they will operate in accordance to the Hawaii State water code particularly pertaining to kuleana rights and usage in the last section.*

Response 2: Regarding your comment about the State Water Code, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

With regards to your comment about kuleana rights, the 1876 agreement between the State and EMI recognized the existence of other property owners, stating that "*existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.*" Moreover, the prior licenses issued to EMI for the License Area in the past continued to recognize the rights of other property owners "for domestic purposes and the irrigation of kuleanas entitled to the same." See CWRM D&O, FOF 55.

Similarly, the relevant revocable permits issued by the State include a clause whereby "*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally*

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protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water. . . .” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all constitutionally protected traditional and customary rights.

We believe that the Draft EIS adequately discusses the impacts of the Proposed Action both in terms of the effects on habitat and on traditional and customary Native Hawaiian practices. Specifically, in terms of habitat, Appendix A and Section 4.2.1 of the Draft EIS presented the HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to determine an appropriate balance between instream and offstream water uses. Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Impacts to terrestrial flora and fauna, including threatened and endangered species, are analyzed in Section 4.4 and Appendix C of the EIS. As it relates to traditional and customary, please note that CSH provides a detailed and comprehensive report accounting the history of East Maui. This report is included in Appendix E and summarized in Section 4.5 of the EIS. The EIS includes an assessment of effects on the cultural practices through the CIA provided as Appendix F.

The information provided satisfies EIS content requirements. This information will also inform BLNR in the future, when it is deliberating on the issuance and terms of the Water Lease. Under the Public Trust Doctrine, BLNR will have to balance competing considerations before making a decision on the Water Lease. The balancing that BLNR is required to perform under the Public Trust Doctrine was described at length by the Hawai‘i Supreme Court in *In Re Water Use Permit Applications*, 94 Hawai‘i 97, 9 P. 3d 409 (2000) (“Waiahole I”) and summarized in Section 1.5 of the Final EIS as shown on pages 1-25 to 1-27.

With regard to the potential effects of the Proposed Action on traditional and customary practices, as discussed in the *Ka Pa ‘akai* decision, we acknowledge that BLNR will be required to “to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible.” *Ka Pa ‘akai*, 94 Hawai‘i at 35, 7 P. 3d at 1072. BLNR has previously so stated in its Findings of Fact, Conclusions of Law, and Decision and Order filed on March 23, 2007 in the contested case proceeding that is still pending regarding the Proposed Action (the 2007 D&O) as follows:

Public trust principles require that adequate provision be made for the protection of ***traditional and customary Hawaiian rights***, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture and navigation.

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2007 D&O COL No. 6 at page 41 (citing *Waiahole I*). CWRM, in its June 20, 2018 D&O, also recited the State's constitutional obligation to consider the impacts of stream diversions in East Maui on traditional and customary practices of Native Hawaiians at pages 242 through 245, including the Supreme Court of Hawaii's more recent holding on this subject in *State v. Pratt*, 127 Hawai'i 206, 277 P. 3d 300 (2012).

We believe that the Draft EIS (including Appendix F) together with the CWRM D&O, provide ample information for the BLNR to consider regarding potential impacts to traditional and customary practices, and that will enable BLNR, at the point that it is deliberating on the Water Lease, to fulfill its constitutional obligation "to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *Ka Pa 'akai* at, 94 Hawai'i at 35, 7 P. 3d at 1072.

Comment 3: *A&B's EIS needs to include acknowledgement of the kuleana being done currently and for future use for the ohana that are there as well as room for those contemplating, knowing that the waters are coming back, that are coming home to again create food on their kuleana.*

Response 3: With regards to your comment about kuleana, as noted in Response #2 above, the 1876 agreement between the State and EMI recognized the existence of other property owners, stating that "existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted." Moreover, the prior licenses issued to EMI for the License Area in the past continued to recognize the rights of other property owners "for domestic purposes and the irrigation of kuleanas entitled to the same." See CWRM D&O, FOF 55.

Similarly, the relevant revocable permits issued by the State include a clause whereby "The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water. . . ." It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all constitutionally protected traditional and customary rights.

Comment 4: *The commission needs to include better and specific use of the ditch which should be how and in what condition they can proceed with any type of contract. Surrounding land should not be included only the ditch and the roads to access.*

Response 4: Regarding your comment about the specific use of the ditch, the EIS was prepared to support the application for the issuance of a long-term Water Lease for the purpose of developing, diverting, transporting and use of the State's East Maui waters through the EMI

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Aqueduct System for the uses described in Chapter 2 of the EIS. Your comment about ‘what condition’ is unclear. We assume that your comment relates to the physical condition of the EMI Aqueduct System. In this regard, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System. We also note that Appendix D of the EIS provides a Historical Structure Assessment East Maui Aqueduct System prepared by Mason Architects to provide an assessment of the historical significance of the EMI Aqueduct System.

Your comment that surrounding land should not be included is unclear. We assume that you are referring to the geographical extent of the License Area. Please note that it is recognized that the License Area could be smaller for the proposed Water Lease than the 33,000 acres of State-land that has historically been the subject of the water lease and/or revocable permits for East Maui surface water. DLNR, under the terms of the revocable permits in effect as of January 1, 2020, removed the Hanawi Natural Area Reserve, consisting of approximately 7,500 acres, from the land area encumbered by the revocable permits which has been reflected in the various figures depicting the License Area in the Final EIS. DLNR-DOFAW has expressed a desire to further reduce the License Area by removing portions of the Ko‘olau Forest Reserve that are not managed by A&B/EMI or that A&B/EMI does not need to operate, maintain and repair the EMI Aqueduct System. It is assumed that the management of public access to those lands would fall on a State Agency as discussed in Section 3.2.2.2 of the Draft EIS. However, due to concerns about public safety, including safety from risks from stream flooding and risks related to the EMI Aqueduct System, it is not anticipated that DLNR would authorize unfettered public access to the EMI Aqueduct System, and therefore it is not anticipated that members of the public would be in a position to report "streamflow violations." Section 3.2.2.2 has been expanded in the Final EIS to further take into account a modified License Area. See pages 3-21 to 3-24 of the Final EIS.

Comment 5: *A&B needs to include a different plan of action to malama the ditch system and should not be allowed to continue operations as they have been which devastated and destroyed vast amounts of resources that caused injury to a people of kuleana.*

Response 5: Your comment regarding the ‘plan of action to mālama the ditch system’ is unclear. We assume that you are referring to how EMI conducts repair and maintenance work on the EMI Aqueduct System within the License Area. As discussed in the Section 2.1.2 of the Final EIS as shown in page 2-7, under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of

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water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment. Moreover, please note that EMI has established standard operating procedures to address the cleanup of trash and debris during the course of its activities. EMI has in place a practice of removing any equipment and excess materials it brings into the License Area to perform work on the EMI Aqueduct System as soon as the job(s) is completed. In addition, employees look out for unnecessary debris in the field during routine maintenance tasks and when unused items are observed from previous field work, EMI has conducted specific identification and removal operations. Of note, smaller portions of the EMI Aqueduct System have been misinterpreted by some to be unused 'debris' when in fact they do serve an operating function.

With regards to your comment about the destruction of resources, please note that under the Proposed Action, no vegetation removal in the License Area is anticipated except occasionally during routine maintenance and repair activities of the EMI Aqueduct System. Moreover, instream flow throughout the License Area is expected to increase and diverted water will be significantly less than what was historically diverted from the License Area during sugarcane operations. Hence, vegetation is expected to remain substantially the same and no direct impacts to flora or fauna are expected as discussed in Section 4.4.1 and Section 4.4.2 of the Draft EIS.

The elevation of the highest ditch that is part of the EMI Aqueduct System, the Koolau Ditch, is approximately 1,400 feet, and the EIS addresses mitigation measures that are applicable to the License Area. Appendix C and in Section 4.4.1 of the Draft EIS provide that endangered or threatened species and critical habitats exist in higher elevations of the License Area. As a mitigation measure, Section 4.4.1 of the Draft EIS states:

To avoid the introduction or transport of new invasive plant species into more pristine portions of the License Area during EMI Aqueduct System maintenance activities, all equipment and vehicles arriving from outside the License Area should be washed and inspected prior to any maintenance activities on cliff sides, near waterfalls, and in other native species-dominated areas in the License Area. Such washing and inspecting should be done at a designated location.

However, please note that the Section 4.4.1 of the Final EIS has been updated to include related mitigation measures based on comments received on the Draft EIS, as shown in pages 4-121 to 4-124.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The

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requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

With regards to your comment about those with kuleana, as noted in Response #2 above, the 1876 agreement between the State and EMI recognized the existence of other property owners, stating that *“existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.”* Moreover, the prior licenses issued to EMI for the License Area in the past continued to recognize the rights of other property owners *“for domestic purposes and the irrigation of kuleanas entitled to the same.”* See CWRM D&O, FOF 55.

Similarly, the relevant revocable permits issued by the State include a clause whereby *“The State reserves the right...to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights...as well as other statutorily or judicially recognized interests relating to the right to withdraw water. . . .”* It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all constitutionally protected traditional and customary rights.

Comment 6: *A&B needs to include on each committee or management team someone from the community of the different Moku and Ahupua`a to ensure what is being done to our resources.*

Response 6: We acknowledge your comments. However, please note that the terms and conditions of the Water Lease are at the discretion of the BLNR. Should the BLNR make this a part of the Water Lease, the lessee will comply with those terms and conditions.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Kecia Joy <keciamau@gmail.com>
Sent: Friday, November 8, 2019 10:59 AM
To: lan.c.hirokawa@hawaii.gov; Public Comment
Subject: Comments on the DEIS for East Maui Waters

I am a Marine Biologist and a concerned citizen of Maui County who has lived here for almost 20 years. I have witnessed and researched first hand the damage that the diversions have caused to our native aquatic species, important cultural practices, local Taro farmers and families who rely on these fresh water streams, and much more. There are five freshwater fishes native to Hawaii which are *Stenogobius hawaiiensis*, *Eleotris sandwicensis*, *Awaous guamensia*, *Sicyopterus stimpsoni*, and *Lentipes concolor* (endemic to Hawaii). Every one of them have record low numbers and are threatened because they have no way of getting past and through all of the number of diversions in these streams and the reduced water flows from these diversions and dams also limit larvae from reaching the ocean and recruiting back into streams. All of the EMI channelization leads to a decrease in riparian vegetation that causes a loss of shelter and erosion control and this needs to be addressed. I don't see any where in the DEIS that shows a plan for: Improving altered or diverted streams by modifying or removing gratings or diversions to allow for in stream passage of fish; Restoring riparian vegetation to help decrease in stream heating and reduce sediment loads; Removal of alien species; Creating pools infrequently dewatered stretches to provide safe usable habitat between flows; Ensuring adequate In stream flow and biological integrity of riparian areas; any work to clean streams with significant pollution; And any progress towards the development of a GIS database that make this information web-accessible.

Also as an avid hiker I have witnessed many stagnant pools full of mosquito larvae caused by these diversions not allowing the flow. This is a concern because it is a major public health issue that needs to be addressed as the Dengue, Chikungunya, and Zika virus diseases are transmitted via the mosquitoes found here in Hawaii. We just had an outbreak of Dengue here on Maui and this is a major concern for me and many others living here. Also as a hiker, there is limited public hiking access to the public lands with out needing to get permission from EMI. If it is public lands, I should have access to these public lands, this is not addressed in the DEIS.

The DEIS should also discuss shorter term lease options of way less than 30 years! That to me is insane as there are so many uncertainties of the future of rainfall especially with the climate crisis upon us and all the heat waves, droughts and fires we have been experiencing!

Lastly, there needs to be an option in the EIS for no diverted streams! I do not see this option and for this being an EIS, it really must be considered. As a resident and concerned biologist, I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.

Please accept these comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Be aware that many many many of us feel Enough is Enough, we will not be tolerating this any longer. Please know there will be a very strong stance against the privatization of public waters in a way that you have never seen before! The people are rising and you, as the informed scientists who created this DEIS, know what is the healthiest route for the land, the streams, the creatures, the plants, and the entire ecosystem, which ultimately affect the people. Your conscience will no longer allow you to cater to the big corporations such as A&B and Mahi Pono. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Thank you for this opportunity to submit comments on this Draft EIS.

Mahalo,
Kecia Joy, Kihei Maui



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September 3, 2021

Ms. Kecia Joy
keciamai@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Joy:

Thank you for comments dated November 8, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am a Marine Biologist and a concerned citizen of Maui County who has lived here for almost 20 years. I have witnessed and researched first hand the damage that the diversions have caused to our native aquatic species, important cultural practices, local Taro farmers and families who rely on these fresh water streams, and much more.*

Response 1: We acknowledge your comments and understand that you are a resident of Maui that is a marine biologist.

Regarding impacts on native aquatic species, please note that the HSHEP model in Appendix A estimates streamflow at all diversion locations based on watershed and rainfall characteristics and analyzes each reasonable alternative on stream flow in Section 3.4.3 and Section 4.2.1 of the Draft EIS. The combination of the lower and upper bounds used for the HSHEP model in Appendix A, provide the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as by definition the changes must fall somewhere between 100% diversion and 0% diversion.

The two scenarios presented in Appendix A of the Draft EIS, the Proposed Action compliant with the CWRM D&O (Trutta Environmental Solutions’ 2018 IIFS scenario) and No Action

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Alternative (30% remaining flow diversion) are examples of how different flow restoration scenarios result in different amounts of habitat restored. The HSHEP model is used to quantify these differences based on flow restoration changes at specific diversions.

As discussed in Section 3.4.3 of the Draft EIS, the HSHEP model requires specific diversion conditions at each diversion. Applying the model to the Reduced Water Volume alternative would require information regarding where stream flows are proposed to be increased over the Proposed Action and the amounts. Given such information, the HSHEP model is able to readily calculate the number of remaining Habitat Units (HU) in any given scenario. The appendices contained within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report (Appendix A of the EIS) provides the necessary data to form a scenario that the HSHEP model can use to analyze and quantify the changes that occur. Hence, the HSHEP model and the appendices within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report provides data that can assist decision makers understand how impacts could change across different diversions scenarios.

Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown in pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text on pages 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and

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as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See pages 4-61 to 4-62 of the Final EIS.

Regarding cultural practices, Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates

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that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the

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existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Regarding taro farmers, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi‘ina‘au, Palauhulu, Waiokamilo, Wailuānui, ‘Ōhi‘a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM’s intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo‘i. The CWRM’s approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

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We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu‘u, Ka‘aiea, ‘O‘opuola, Puehu, Nāili‘ilihaele, Kailua, Hanahana, Hoalua, Waipi‘o, Mokupapa and Ho‘olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown in pages 1-19 to 1-23 of the Final EIS. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration status); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe‘e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo‘i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in the included pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms

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irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 2: *There are five freshwater fishes native to Hawaii which are *Stenogobius hawaiiensis*, *Eleotris sandwicensis*, *Awaous guamensia*, *Sicyopterus stimpsoni*, and *Lentipes concolor* (endemic to Hawaii). Every one of them have record low numbers and are threatened because they have no way of getting past and through all of the number of diversions in these streams and the reduced water flows from these diversions and dams also limit larvae from reaching the ocean and recruiting back into streams. All of the EMI channelization leads to a decrease in riparian vegetation that causes a loss of shelter and erosion control and this needs to be addressed. I don't see any where in the DEIS that shows a plan for: Improving altered or diverted streams by modifying or removing gratings or diversions to allow for in stream passage of fish; Restoring riparian vegetation to help decrease in stream heating and reduce sediment loads; Removal of alien species; Creating pools infrequently dewatered stretches to provide safe usable habitat between flows; Ensuring adequate In stream flow and biological integrity of riparian areas; any work to clean streams with significant pollution; And any progress towards the development of a GIS database that make this information web-accessible.*

Response 2: Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

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Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered.

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Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83 of the Final EIS.

Potential impacts from the abandonment of structures and equipment as it relates to native stream habitat was assessed and discussed in Appendix A, the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report.

The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

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However, please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals.

Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

The two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped.

Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts.

The above is discussed in more detail in Section 4.2.1 of the Final EIS as shown pages 4-61 to 4-67.

Comment 3: *Also as an avid hiker I have witnessed many stagnant pools full of mosquito larvae caused by these diversions not allowing the flow. This is a concern because it is a major public health issue that needs to be addressed as the Dengue, Chikungunya, and Zika virus diseases are transmitted via the mosquitoes found here in Hawaii. We just had an outbreak of Dengue here on Maui and this is a major concern for me and many others living here.*

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Response 3: We acknowledge your comments. With respect to your comment about mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown in pages 4-58 to 4-61, pages 4-126 to 4-127, and pages 4-130 to 4-131

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Comment 4: *Also as a hiker, there is limited public hiking access to the public lands with out needing to get permission from EMI. If it is public lands, I should have access to these public lands, this is not addressed in the DEIS.*

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Response 4: Please note that Public Access has been regulated, in partnership with the Department of Land and Natural Resources, by EMI for decades. EMI assumes liability for unlawful access into the License Area, thus restricting access protects EMI. Public access to the License Area, including the Forest Reserve lands, is currently limited to permitted access by hunting groups and hiking clubs as discussed in Section 4.8 of the EIS. Access to the Ko‘olau Forest Reserve Hunting Units, which include portions of the Huelo, Honomanū, Ke‘anae, and Nāhiku License Areas, is managed by the Department of Land and Natural Resources (DLNR) Division of Forestry and Wildlife. In order to hunt in these areas, hunters must first obtain a license from the DLNR and an EMI Permit/Waiver. Access to the hunting units is managed by EMI through eight existing access roads. Hunters are permitted to enter the areas by vehicle but must traverse most areas by foot. Hiking is also a permitted recreational use within the License Area and is limited to hiking clubs. Hiking access requires a Hiking Waiver form EMI.

Access to the License Area is limited for the safety of entrants. For hunters, hunting grounds are limited to one hunting party per hunting area, as regulated by the DLNR. The hiking groups that currently access the License Area, Sierra Club Maui Group and Mauna Ala Hiking Club, enter the License Area by foot and are guided by a club hiking expert with a manageable number of people, however, access is not limited to these two clubs. Any hiking clubs wishing to access the License Area must follow the same procedures. However, limiting access to the License Area also limits potential impacts to historic properties and natural resources

Increased public access has the potential to pose a greater impact to historic properties and the environment, especially if public access is unmanaged. Recently, concerns for these impacts have prompted visitor limitations to the culturally significant Hā‘ena State Park on the north shore of Kaua‘i. Potential impacts from unmanaged access could include looting and “rock-robbing” of surface and subsurface historic properties, littering, harvesting of archaeologically associated flora such as *ti* (*Cordyline fruticosa*), trampling or erosion from pedestrian/vehicular access, and unpermitted ground disturbance. Significant impacts to historic properties as a result of unmanaged access have been documented elsewhere in the State.

Moreover, Section 3.2.2.2 of the EIS, “Modified Lease Area”, discusses what is needed to provide appropriate buffers to ensure public safety and the security of the system to allow for more public access into the License Area.

Moreover, please note that EMI's understanding is that the most popular access points to the Ko‘olau Forest Reserve are [believed to be] owned by EMI. Therefore, EMI assumes liability for those access points. Thus, restricting access to the general public through areas that are owned by EMI/A&B is necessary.

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Comment 5: *The DEIS should also discuss shorter term lease options of way less than 30 years! That to me is insane as there are so many uncertainties of the future of rainfall especially with the climate crisis upon us and all the heat waves, droughts and fires we have been experiencing!*

Response 5: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural

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operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80 of the Final EIS, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Regarding climate change, climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown in the pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Comment 6: *Lastly, there needs to be an option in the EIS for no diverted streams! I do not see this option and for this being an EIS, it really must be considered. As a resident and concerned biologist, I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.*

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Response 6: Please note that while this is not discussed in the EIS, the EIS does discuss the No Action alternative whereby the Water Lease is not issued. The No Action alternative assessed in Section 3.3 EIS assumes that if no Water Lease were issued, the EMI Aqueduct System could continue to divert approximately 30% of the water available from the Collection Area, plus approximately 4.37 mgd from the privately owned lands between Honopou Stream and Māliko Gulch. That is because the rights under the 1938 Agreement are independent of the Proposed Action under consideration in this EIS. Moreover, impacts of the No Action alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories.

Comment 7: *Please accept these comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Be aware that many many many of us feel Enough is Enough, we will not be tolerating this any longer. Please know there will be a very strong stance against the privatization of public waters in a way that you have never seen before! The people are rising and you, as the informed scientists who created this DEIS, know what is the healthiest route for the land, the streams, the creatures, the plants, and the entire ecosystem, which ultimately affect the people. Your conscience will no longer allow you to cater to the big corporations such as A&B and Mahi Pono. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Thank you for this opportunity to submit comments on this Draft EIS.*

Response 7: We acknowledge your comments. We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities,

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and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beauprez

From: La'akea Kaufman <kea.kaufman@gmail.com>
Sent: Monday, November 4, 2019 2:41 AM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: EIS

Dear Mr. Hirokawa,

I am deeply disturbed by the parameters of this EIS granting water rights for Mahi Pono. The irony is not lost on the people of Hawai'i; there is nothing pono about this. Rather, what it seeks is to continue the colonial, extractive legacy of large corporations coming into Hawai'i, usurping land and water resources, with no regard for anything other than profits.

But people are stronger than profits. We have seen countless examples of this resiliency in Hawai'i, most recently on top of Mauna Wakea, where we are resisting corporate greed and land desecration atop one of the most sacred sights in indigenous tradition. Make no mistake, we will continue the fight.

I strongly oppose this measure and will be out fighting with the rest of our lāhui against this. No water leases for Mahi Pono, let the streams run free!

Sincerely,
La'akea Kaufman



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

La'akea Kaufman
Kea.kaufman@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear La'akea Kaufman:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am deeply disturbed by the parameters of this EIS granting water rights for Mahi Pono. The irony is not lost on the people of Hawai'i; there is nothing pono about this. Rather, what it seeks is to continue the colonial, extractive legacy of large corporations coming into Hawai'i, usurping land and water resources, with no regard for anything other than profits.*

Response 1: We acknowledge your comments. Please note that the EIS does not grant anything for Mahi Pono or the Applicant. The EIS is an environmental disclosure document that assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 2: *But people are stronger than profits. We have seen countless examples of this resiliency in Hawai'i, most recently on top of Mauna Wakea, where we are resisting corporate*

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greed and land desecration atop one of the most sacred sights in indigenous tradition. Make no mistake, we will continue the fight.

Response 2: We acknowledge your comments. However, please note that the ongoing issues at Maunakea is not within the scope of this EIS. As noted in Response #1 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

With regards to traditional practices and cultural resources, the CIA acknowledges that the Proposed Action may impact Native Hawaiian cultural resources and practices and provides for several recommendations to mitigate those impacts. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to ‘ōpae, ‘o‘opu, pūpūlo‘i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Honopou (Puniawa Tributary), Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili‘ula, Pa‘akea, Kapā‘ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua‘aka‘a Tributary, and Waia‘aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo‘i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro

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farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili‘ula, Pua‘aka‘a, Pa‘akea, Waia‘aka, Kapā‘ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for

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cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all constitutionally protected traditional and customary rights.

Comment 3: *I strongly oppose this measure and will be out fighting with the rest of our lāhui against this. No water leases for Mahi Pono, let the streams run free!*

Response 3: Your comments that you strongly oppose the Proposed Action are acknowledged.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

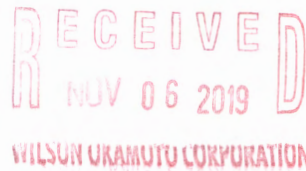
A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

November 4, 2019

Mr. Earl Matsukawa
Wilson Okamoto Corp.
1907 S. Beretania St., Suite 400
Honolulu, HI 96826



Please accept my comments on the Draft EIS on the proposed EMI 30 year lease.

I care very deeply about this proposed lease of the public water because I am a land owner with frontage along Honopou Stream. TMK 2-9-001-010-0000

The Draft EIS needs to address my following concerns.

The DEIS needs to address in engineering terms, with supporting calculations, the anticipated unintended consequences of restoring the Honopou and other designated streams to 100% flow.

The State Bridge on State Land that crosses the Honopou Stream will frequently go completely under water during a rainy period, particularly when a freshet empties its contents on the region.

The Bridge is sitting on dry stacked blue rock. The State refuses to maintain the Bridge!

An even more pressing concern is the capability of the tunnel beneath the Hana Highway at Honopou to carry all of the stream flow under flood conditions. I direct your attention to the Right of Way map, Hana Belt Road, Federal Aid Project No 32A which illustrates a subterranean tunnel but offers no dimensions or support calculations as to its carrying capacity. The tunnel, during my past 50 years in the neighborhood, frequently clogs with debris and vegetation that severely impacts the tunnels carrying capacity. Frequently mauka homeowners are denied access to their homes when the tunnel clogs and stream water backs up into the valley.

In the early 1940's, when the Hana Belt Road was designed and built, EMI was already diverting millions of gallons per day from the Honopou Stream. If the highway design team did not account for the already diverted water when they designed the tunnel it maybe that the tunnel cannot handle the Honopou Stream restored to full flow!

The DEIS must include an engineering analysis of the water carrying capacity of the tunnel under the Hana Belt Road at Honopou.

The DEIS must include an engineering analysis of the risk to the Honopou Bridge when it is subjected to total immersion and fast moving stream flows.

The DEIS must include a survey of stream frontage lots, and loi that serve taro growers to identify all unintended consequences of restoring the Honopou Stream to full flow.

Altho my concerns are local and personal, these same demands should extend to the entire lease area to mitigate unintended consequences.

Lafayette Young
150 Puniawa Road
Haiku, HI 96708

Enc. two maps, Hana Belt Road

Department Folder 22-4-48-4
Coordinate points shown have been adjusted to agree
with the ... August 27, 1949

77

TERRITORY OF HAWAII
DEPARTMENT OF PUBLIC WORKS
DIVISION OF SURVEYS AND RIGHTS OF WAY
RIGHT OF WAY MAP
HANA BELT ROAD

FEDERAL AID PROJECT, NO 32-A (1)
KU, HONOPOU, HOOLAWA, HONOKALA AND MOKUPAPA
HAMAKUALOA, MAUI, T. H.

Honolulu, T. H.
-11 2, 1949

Approved by: *P. G. ...*
Chief Cadastral Engineer

Approved by: *N. ...*
Supt. of Public Works

P.H. 129-A

Laf Young
150 Punahoa Rd
Honolulu, HI 96708



RECEIVED
OCT 07 2019
WILSON OKAMOTO CORPORATION

Mr. Earl Matsukawa
Wilson Okamoto Corp.
1907 S. Beretania St. Suite 400
Honolulu, HI 96826

9682681301 C019



11/4/17

EXHIBIT X-4-01607

Earl:

You will find this interesting. I've highlighted the event for Honopou Stream.

6,000 cuf³/sec, plus whatever water was drawn off in the Ditches ~~could~~ may overwhelm the tunnel passing under the Hana Hwy @ Honopou.
IAF Young

HAWAII

Floods and Droughts

See page 3.
+ 5

Hawaii's climate is relatively warm year round. The annual temperature ranges from about 51 to 93 degrees Fahrenheit except at high altitudes, where it is cooler. The trade winds, which blow from the northeast, have a cooling effect on the islands. The trade winds and the mountains are the most important factors affecting Hawaii's climate; together, they create an orographic effect that furnishes Hawaii with its abundance of freshwater from precipitation. The orographic effects result in almost three times as much rainfall over the islands as over the ocean. The principal moisture delivery patterns are shown in figure 1.

The annual rainfall of 70 inches supplies nearly 8 trillion gallons of water per year to Hawaii. Although most of this rainfall is produced orographically, major storms also are substantial contributors.

Flooding in Hawaii is caused by major storms or by tsunamis. The worst flood, in terms of lives lost, was caused by the tsunami of April 1, 1946. Throughout the State (Territory at that time), 157 deaths were reported. Of those deaths, 121 were on the island of Hawaii. Estimated damage was \$25 million.

The greatest rainfall rate on record was 38 inches in 24 hours during the storm that caused the flood of January 24-25, 1956, at Kilauea, Kauai (fig. 2). During the storm, 12 inches fell within 1 hour, and the total rainfall was 43.5 inches. One person drowned in the flood.

The largest recorded statewide property damage was caused by Hurricane Iwa and the resulting flood of November 23, 1982. Total estimated damage was \$308 million, mostly on the islands of Kauai and Oahu.

Although the world's wettest locality is in Hawaii, droughts can occur. The areas most affected by droughts are those that normally are dry and depend on winter rains and those that do not have a ground-water supply or a water supply from another area. Local

areas most affected by droughts are on the islands of Hawaii and Maui.

The State's water resources are managed and developed by the Department of Land and Natural Resources through the Division of Water Resources Management (formerly the Division of Water and Land Development) and by the Board and Departments of Water Supply of local governments. The Department of Health administers regulations for the protection of Hawaii's ground and surface water and coastal seawater.

GENERAL CLIMATOLOGY

Trade winds are the most dominant feature controlling the circulation of air across the Hawaiian Islands. The trade winds blow from the northeast and represent the outflow of air from the great Pacific anticyclone that is commonly located northeast of the Hawaiian Islands.

The combination of trade winds and mountainous topography has a significant effect on the climate of the islands. From May through September, the trade winds are prevalent 80-95 percent of the time. From October through April, the frequency decreases to 50-80 percent. During this period, moisture may come from the northwest or south (fig. 1). The warmer period of May through September and the cooler period of October through April constitute the two seasons of the year.

The trade winds, although dominant and persistent, especially during the warmer season, are not the only factor in the climatic setting of Hawaii. Land and sea breezes, upslope and downslope winds, and major storms also are types of air movement that affect the climate.

In areas of tall mountains, which are physical barriers that block the trade winds, land and sea breezes are dominant. In addition, the diurnal cycle consists of upslope winds during the day and downslope winds during the night, especially on the slopes of tall mountains.

Major storm systems, which commonly occur from October to April, can affect all parts of the islands. Major storms generally number from none to six in any given year and may differ substantially in severity from year to year. These storms bring intense rains, sometimes accompanied by strong winds.

The four types of major storms that affect the Hawaiian climate are frontal systems, combination of frontal and upper level low-pressure systems, upper level low-pressure systems, and tropical storms or hurricanes. When frontal systems pass through the islands, which happens rarely, it is generally during the cooler sea-

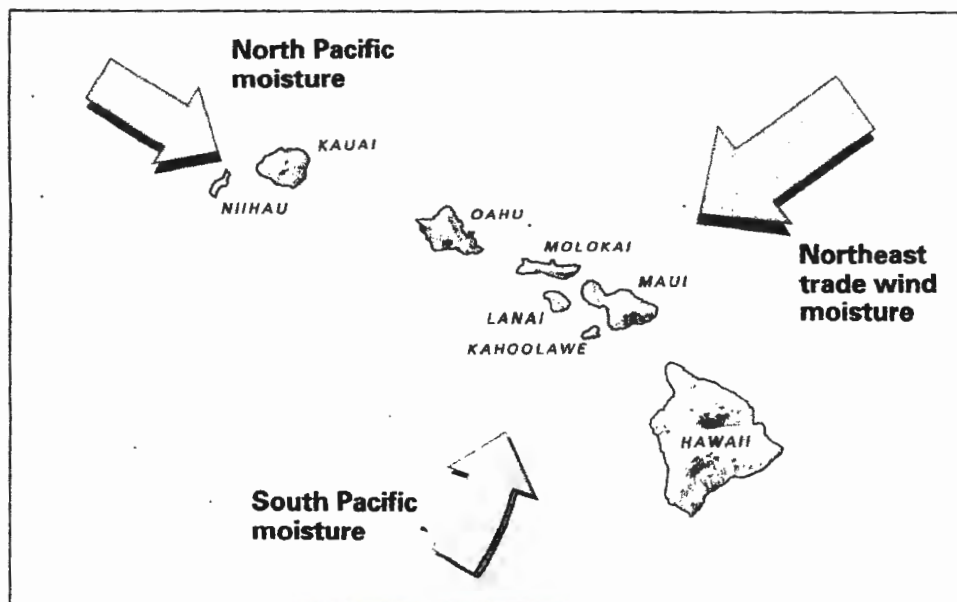


Figure 1. Principal sources and patterns of delivery of moisture into Hawaii. Size of arrow implies relative contribution of moisture from source shown. (Source: Data from Douglas R. Clark and Andrea Lage, Wisconsin Geological and Natural History Survey.)

Seventy inches of annual rainfall is equivalent to about 8 trillion gallons of water per year, or about 17 times the State's annual water use of 460 billion gallons (U.S. Geological Survey, 1990). Seemingly, the Hawaiian Islands would not have a water-supply problem with so much rainfall. However, rainfall totals cannot be related directly to water supply because water is lost (before consumption) through evaporation, transpiration, and runoff. Another important factor is the uneven distribution of rainfall with respect to location and time.

The gradient in annual rainfall is steep in many areas of the islands. In many places, the gradient exceeds 25 inches for each mile traversed along a straight line (Blumenstock and Price, 1967).

At altitudes below 2,000 feet, where most of the population lives, most rain falls in the cooler season. An exception is at Kona, on the Island of Hawaii, where average rainfall is greater during the warmer season. Rainfall is more frequent and of greater intensity during the night or early morning than during the day. Rainfall is more variable during the cooler season than during the warmer season. When winter storms are absent, total rainfall in the cooler season is substantially less because winter storms contribute appreciably to rainfall totals.

Two climatic conditions that affect Hawaii's weather are the El Niño and the Southern Oscillation. El Niño and the Southern Oscillation are oceanic and atmospheric components, respectively, of large-scale oceanic-atmospheric interactions in the Pacific Ocean (Enfield, 1989). Initially, El Niño was the name given to the warm ocean current that periodically develops off the coast of Peru and Ecuador, usually around the Christmas season. Today, the name is used to identify the warming of the ocean surface that extends far westward from the South American coast along the equator. The Southern Oscillation refers to the periodic changes in atmospheric pressure between the eastern and western sides of the South Pacific Ocean that reflect the large-scale exchange of air between these regions. El Niño and the Southern Oscillation are so closely related that this type of large-scale event is commonly referred to as El Niño/Southern Oscillation (ENSO).

Additional studies are needed to understand clearly the pronounced effect ENSO has on Hawaiian rainfall, as well as global weather. ENSO is the only large-scale phenomenon of long duration that, when it occurs, can be used to predict the rainfall for the upcoming year with a large probability of success.

MAJOR FLOODS AND DROUGHTS

Most major floods and droughts described herein are those that had significant recurrence intervals—greater than 25 years for floods and greater than 10 years for droughts; other floods are included because they are known to have been major events even though the actual severity is unknown. Major floods and droughts are listed chronologically in table 1; rivers and cities are shown in figure 2. To depict floods (fig. 3) and droughts (fig. 4) in Hawaii, nine streamflow-gaging stations were selected from the statewide network. Of these, three were used to depict floods, three were used to depict droughts, and three were used to depict both floods and droughts. The gaging stations were selected on the basis of areal coverage, length of record, and representation of hydrologic conditions in their respective areas. Streamflow data are collected, stored, and reported by water year (a water year is the 12-month period from October 1 through September 30 and is identified by the calendar year in which it ends).

FLOODS

Floods occur nearly every year on one or more streams in Hawaii. The areal extent and severity of major floods are shown on

the maps in figure 3. Also shown are graphs of annual peak discharges for the six selected streamflow-gaging stations. The graphs illustrate the typical year-to-year variability of peak discharge in streams.

One of the most severe and destructive floods of record in Hawaii was in the Iao Valley on the Island of Maui on January 14, 1916. The peak discharge was estimated to be 17,000 cubic feet per second in Iao Stream. Thirteen deaths were reported, and about 50-75 homes were destroyed. Estimated damage was \$600,000 (Hawaii Division of Water and Land Development, 1983a).

On November 18, 1930 (water year 1931), Kalihi Stream near Honolulu on Oahu (fig. 3, site 3) and Honopou Stream near Huelo on Maui (fig. 3, site 5) had record peak discharges with a recurrence interval of greater than 100 years. On Oahu, 11 deaths were reported in the Kalihi Valley, and damage was estimated at \$125,000 (Hawaii Division of Water and Land Development, 1983a). On Maui, roads and bridges were destroyed, and pineapple fields were damaged; damage was estimated to be \$50,000 (Hawaii Division of Water and Land Development, 1983a).

The devastating flood of February 27, 1935, was produced by a storm that crossed Oahu from the northwest with accompanying thunder, lightning, and hail. Rainfall reported in the Wahiawa area was 20 inches within 24 hours. Ten people drowned, and several houses were destroyed. Damage was estimated at \$700,000 (Hawaii Division of Water and Land Development, 1983a).

The flood of August 11-12, 1940, occurred on the "Big Island" of Hawaii. On August 11, the Wailuku River at Piihonua (fig. 3, site 6) had a record peak flow with a recurrence interval of greater than 100 years. Only a few bridges were damaged. Estimated damage was \$50,000 (Hawaii Division of Water and Land Development, 1983a).

Tsunamis (seismic sea waves) can cause devastating floods. A tsunami is a series of waves that travels at tremendous speeds and is caused by submarine earthquakes or seismic disturbances. The flood of April 1, 1946, which was caused by a tsunami, resulted in 157 deaths in the Hawaiian Islands. The "Big Island" experienced the greatest impact of the flood with 121 deaths reported. Total estimated damage was \$25 million (Hawaii Division of Water and Land Development, 1983a).

Intense rainfall on Kauai—19.8 inches in about 14 hours in one location—resulted in a damaging flood on November 11-12, 1955 (water year 1956). The East Branch of the North Fork Wailua River near Lihue (fig. 3, site 2) had a record peak flow on November 12 with a recurrence interval of greater than 100 years. Estimated damage for the flood was \$100,000 (Hawaii Division of Water and Land Development, 1983a).

The greatest rainfall intensity on record in Hawaii was about 38 inches in 24 hours during the storm of January 24-25, 1956, at Kilauea, Kauai. During the storm, 12 inches of rain fell within 1 hour, and total rainfall was 43.5 inches (Blumenstock and Price, 1967). Although no gaging stations were located in the drainage basin to record the peak flows, record peak flows were reported at nearby gaging stations on Anahola Stream and Kapaa Stream. One motorist drowned when a car was swept off the highway. The highway bridge at Moloaa was washed out; as a result, northern Kauai was temporarily isolated from the rest of the island. Most of the damage was to agricultural land.

The flood of March 9, 1957, was caused by a tsunami. Three deaths were reported, and damage totaled \$3.3 million (Hawaii Division of Water and Land Development, 1983a).

Although tropical cyclones pass close to the Hawaiian Islands, only one hurricane has passed directly over an island. A weakened hurricane, Hurricane Dot, passed over Kauai on August 4, 1959, resulting in a flood that caused \$11.5 million in damage (Hawaii Division of Water and Land Development, 1983a).

The second worst flood on record caused by a tsunami occurred on May 22, 1960. As during the tsunami-related flood of 1946,

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the "Big Island" experienced the greatest impact, with 61 deaths reported. Damage throughout the State totaled about \$26 million (Hawaii Division of Water and Land Development, 1983a).

On April 15, 1963, the South Fork Wailua River near Lihue (fig. 3, site 1) on Kauai had a record peak flow with a recurrence interval exceeding 100 years. The storm that caused this flood also caused flooding and death on Oahu. Two soldiers drowned in a swollen stream in the mountains. Several homes on Oahu were damaged, and a subdivision near Kaneohe was declared a major disaster area by State and Federal Governments. Estimated damage was \$492,000 on Kauai and \$1.7 million on Oahu (Hawaii Division of Water and Land Development, 1983a).

Two people were swept to their deaths on February 4, 1965, when a stream near Kaneohe overtopped its banks. On Molokai, the Halawa Stream near Halawa (fig. 3, site 4) had a record peak flow with a recurrence interval exceeding 100 years. Estimated damage was \$593,000 on Oahu and \$36,000 on Molokai (Hawaii Division of Water and Land Development, 1983a).

The flood created by Hurricane Iwa on November 23, 1982 (water year 1983), caused severe damage and flooding on the southern coast of Kauai and lesser damage and flooding on the western coast of Oahu. Hurricane Iwa was weakening as it passed 30 miles west of Kauai, but it still caused the greatest property damage on record for a single flood. Damage, mainly on Kauai and Oahu, totaled \$308 million (Hawaii Division of Water and Land Development, 1983a).

Table 1. Chronology of major and other memorable floods and droughts in Hawaii, 1916-88

[Recurrence interval: The average interval of time within which streamflow will be greater than a particular value for floods or less than a particular value for droughts. Symbol: >, greater than. Sources: Recurrence intervals calculated from U.S. Geological Survey data; other information from U.S. Geological Survey, State and local reports, and newspapers]

Flood or drought	Date	Area affected (fig. 2)	Recurrence interval (years)	Remarks
Flood	Jan. 14, 1916	Island of Maui (Iao Valley)	Unknown	Deaths, 13; damage, \$800,000.
Flood	Jan. 16, 1921	Island of Oahu	Unknown	Deaths, 4; damage, \$250,000.
Flood	Nov. 18, 1930	Island of Oahu (Kalihi, Moanalua, and Halawa Valleys); Island of Maui (Honopou Stream).	>100	Deaths, 11 in Kalihi Valley; damage, \$125,000 on Oahu and \$50,000 on Maui.
Flood	Feb. 27, 1935	Island of Oahu	Unknown	Several houses washed away. Deaths, 10; damage, \$700,000.
Drought	1938-47	Statewide	10 to >50	Record drought on Kauai, Oahu, and Hawaii.
Flood	Aug. 11-12, 1940	Island of Hawaii (Wailuku River)	100	Damage, \$50,000.
Flood	Apr. 1, 1946	Statewide	Unknown	Tsunami. Deaths, 157; damage, \$25 million.
Flood	Feb. 7, 1949	Islands of Kauai and Oahu	>25	Damage, \$700,000.
Flood	Nov. 27-28, 1954	Islands of Kauai and Oahu	Unknown	Deaths, 2 on Oahu; damage, \$560,000 on Kauai and \$750,000 on Oahu.
Flood	Nov. 11-12, 1955	Island of Kauai (East Branch of North Fork Wailua River).	>100	Rainfall of 19.8 inches in 14 hours at Kilauea. Damage, \$100,000.
Flood	Jan. 24-25, 1956	Kilauea, Kauai	Unknown	Greatest rainfall intensity on record, 38 inches in 24 hours; one death.
Flood	Mar. 9, 1957	Statewide	Unknown	Tsunami. Deaths, 3; damage, \$3.3 million. Declared disaster area by State and Federal Governments.
Flood	Aug. 4, 1959	Island of Kauai	Unknown	Hurricane Dot. Damage, \$11.5 million. Declared disaster area by State and Federal Governments.
Flood	May 22, 1960	Statewide	Unknown	Tsunami. Deaths, 61; damage, \$26 million. Declared disaster area by State and Federal Governments.
Flood	Apr. 15, 1963	Islands of Kauai (South Fork Wailua River) and Oahu.	>100	Several homes damaged by flash flood. Deaths, 2; damage, \$2.2 million.
Flood	Jan. 23, 1965	Island of Maui (Palikoa Stream)	>100	Damage, \$4,000.
Flood	Feb. 4, 1965	Islands of Oahu and Molokai (Halawa Stream).	>100	Deaths, 2; damage, \$593,000 on Oahu and \$36,000 on Molokai.
Flood	May 2, 1965	Honolulu, Oahu	Unknown	One person injured. Damage, \$100,000.
Flood	Jan. 11, 1967	Waimea, Hawaii	Unknown	Damage, \$25,000.
Flood	Feb. 1, 1969	Island of Oahu	Unknown	Damage, \$705,000.
Drought	1970-79	Islands of Kauai, Oahu, Molokai, and Maui.	10 to >50	Worst drought in more than 70 years on Molokai and Maui.
Flood	Nov. 29, 1976	Island of Hawaii	Unknown	Tsunami and earthquake. Damage, \$3.11 million.
Flood	Feb. 17-22, 1979	Island of Hawaii	Unknown	Two persons injured; 250 families evacuated. Businesses, houses, and sugar crops damaged. Damage, \$6 million. Declared major disaster area by State and Federal Governments.
Flood	Nov. 15-18, 1979	Island of Hawaii	Unknown	Northern, eastern, and southern sections affected. Damage, \$3.75 million. Declared major disaster area by State.
Flood	Jan. 6-14, 1980	Statewide	Unknown	High winds and surf, intense rains. Damage, \$42.6 million.
Flood	Oct. 28, 1981	Island of Oahu (Waieawa Stream).	Unknown	Sixty-two people evacuated. Damage, \$786,000. Declared major disaster area by State.
Flood	Nov. 23, 1982	Statewide	Unknown	Hurricane Iwa. Damage, \$308 million mainly on islands of Kauai and Oahu.
Drought	1983-88	Statewide	10 to >25	Second most severe in history on some islands.

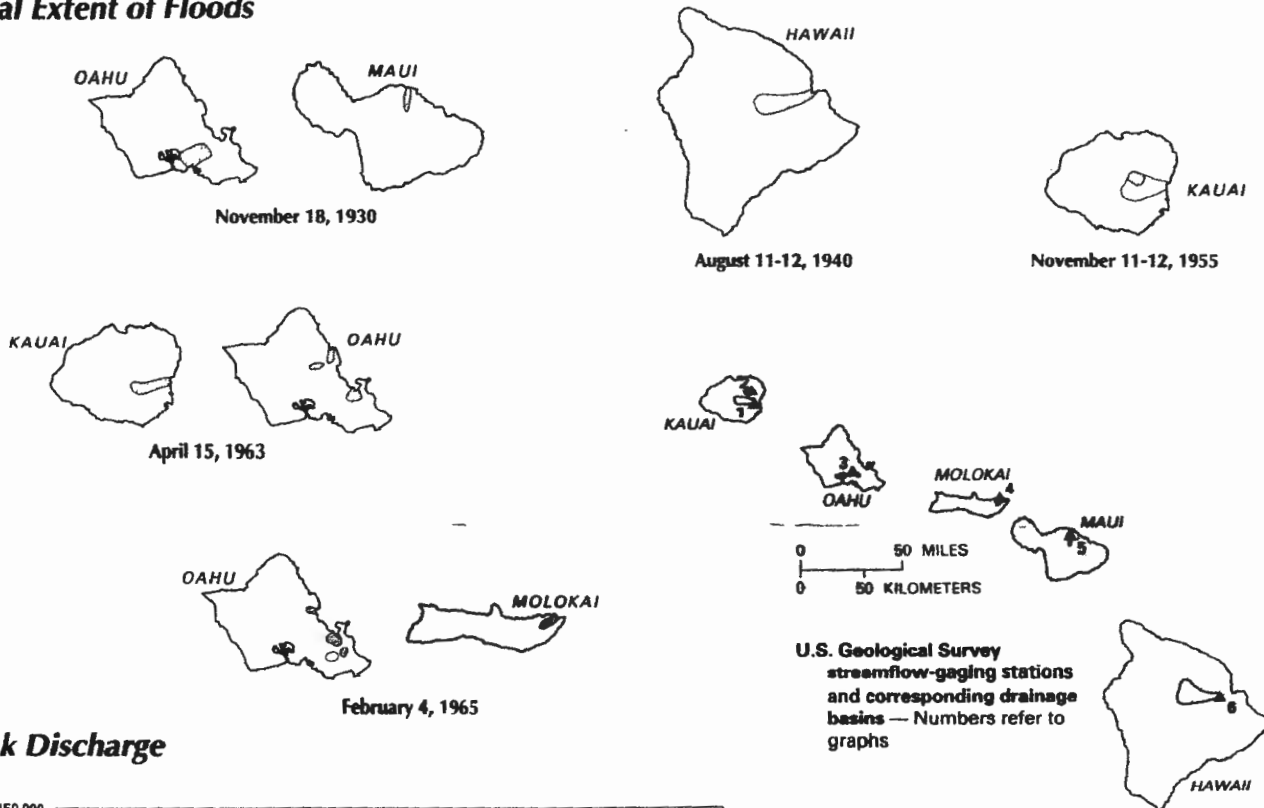
Most of the drainage basins in Hawaii are less than 10 mi² (square miles), and many are less than 5 mi², especially on the islands of Molokai and Oahu. Storms that produce intense rainfall over most or all of the drainage area of small basins can cause runoff having large unit discharges (discharge per square mile of drainage area) due to the small contributing drainage area. Some gaging stations on streams having less than 1.0 mi² of contributing drainage area have recorded unit discharges of greater than 5,000 cubic feet per second per square mile. Small-basin floods such as these can be devastating, but the damage is confined to a small area.

Floods can occur anywhere in the State. When population and property are unaffected, limited attention is given to an event. When people and property are affected, human safety and minimization of property damage are of most importance. The islands have experienced death and destruction as a result of floods. However, because of the small drainage basins and the effective management practices of State and local officials, the impacts have not been as great as those experienced by other States.

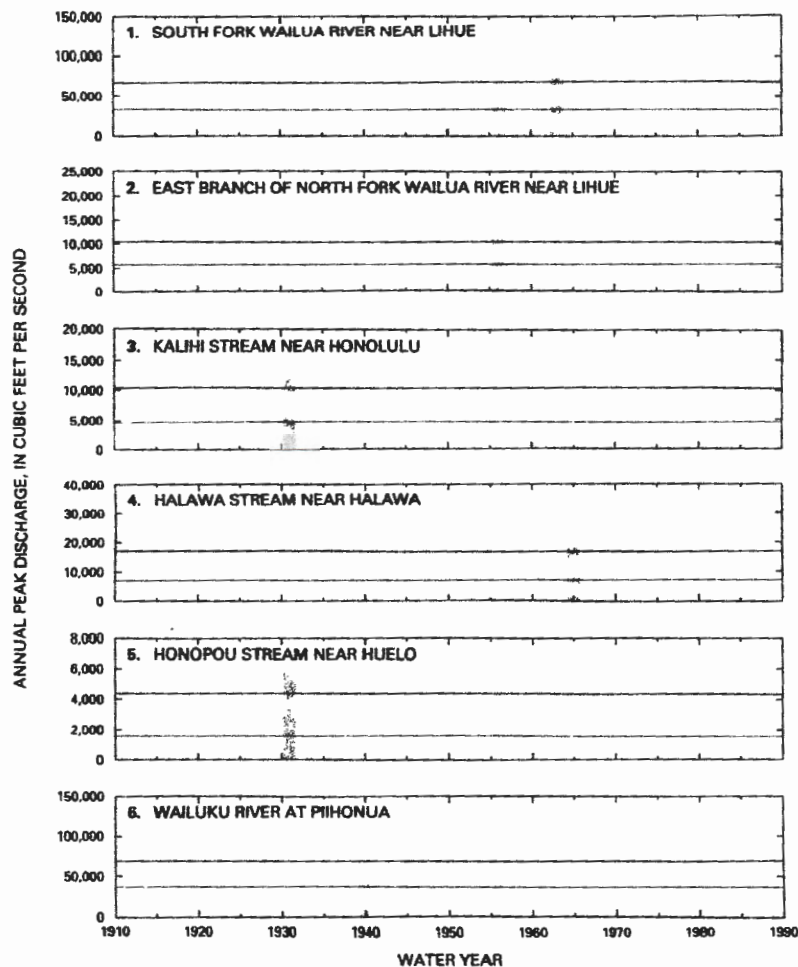
DROUGHTS

Droughts in the Hawaiian Islands can be defined as periods when rainfall is substantially less than normal and human activity is impaired. The climatic setting that produces droughts in Hawaii is

Areal Extent of Floods



Peak Discharge



EXPLANATION

Areal extent of major flood

Recurrence interval, in years

25 More to than 50 50

- November 18, 1930 (water year 1931)
- August 11-12, 1940 (water year 1940)
- November 11-12, 1955 (water year 1956)
- April 15, 1963 (water year 1963)
- February 4, 1965 (water year 1965)

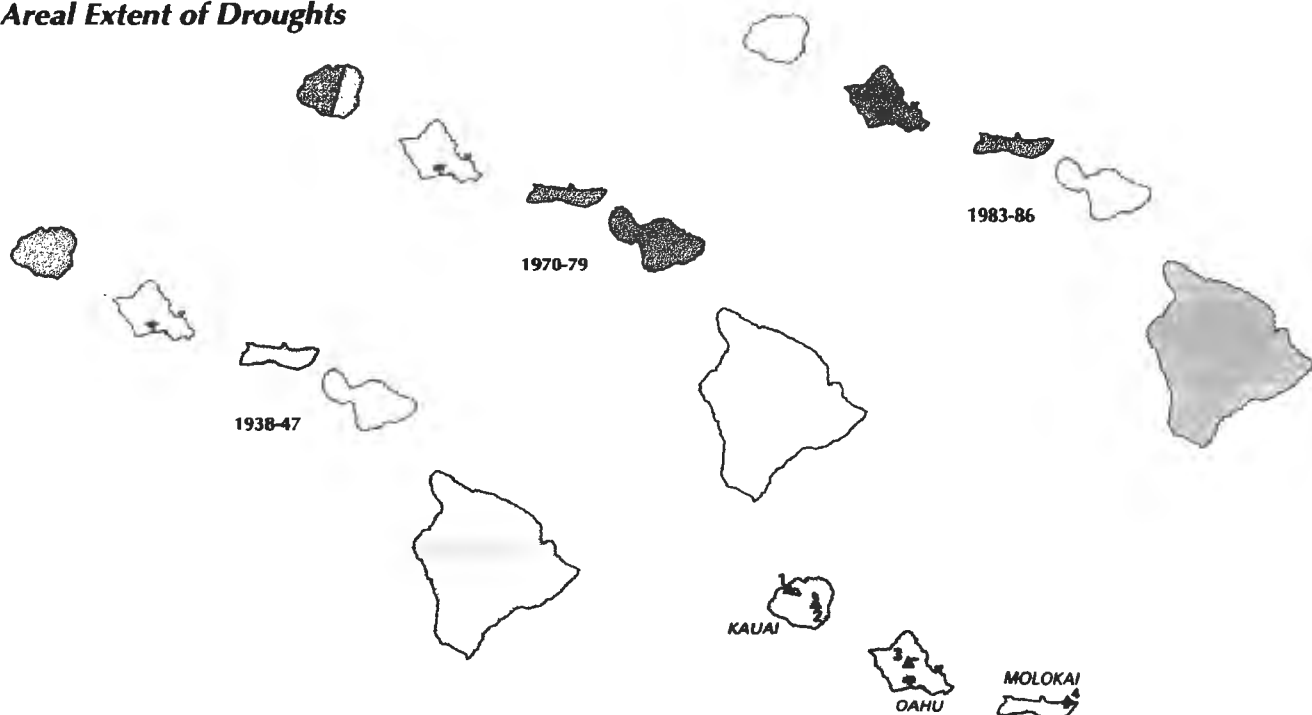
Annual stream peak discharge

- Mapped flood—Color corresponds to flood date
- 100-year recurrence
- 10-year recurrence
- Peak discharge

1960 1990

Figure 3. Areal extent of major floods with a recurrence interval of 25 years or more in Hawaii, and annual peak discharge for selected sites, water years 1911-88. (Source: Data from U.S. Geological Survey files.)

Areal Extent of Droughts



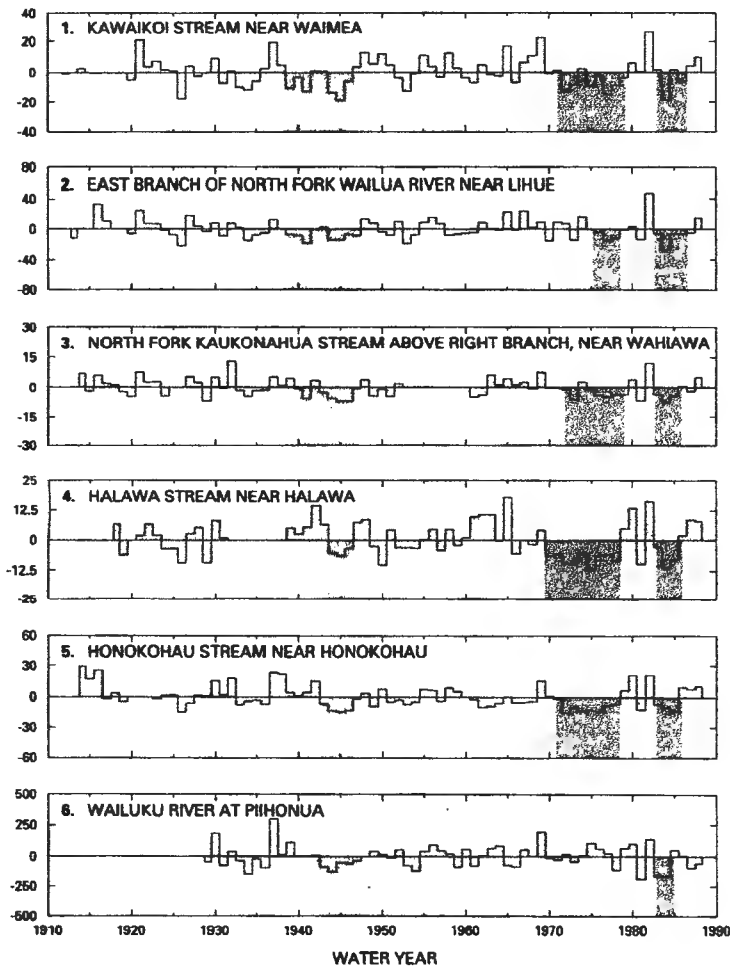
0 50 MILES
0 50 KILOMETERS

U.S. Geological Survey streamflow-gaging stations and corresponding drainage basins — Numbers refer to graphs



Annual Departures

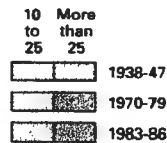
ANNUAL DEPARTURE FROM AVERAGE DISCHARGE, IN CUBIC FEET PER SECOND



EXPLANATION

Areal extent of major drought

Recurrence interval, in years



Annual departure from average stream discharge

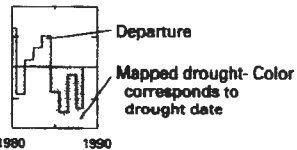


Figure 4. Areal extent of major droughts with a recurrence interval of 10 years or more in Hawaii, and annual departure from average stream discharge for selected sites, water years 1912-88. (Source: Data from U.S. Geological Survey files.)

the combined absence of winter storms and rain-bearing trade-wind clouds for an extended time.

The areas most affected by droughts are those that normally are dry and depend on winter rains and those that receive little rain from the trade winds. Also greatly affected are the areas that have no ground-water supply or water supply from another area. Even locations having a ground-water supply are affected when the supply reaches a critically low level and water-use restrictions are implemented.

The islands affected by three major droughts and the severity of those droughts are shown on the maps in figure 4. The graphs show the annual departures from average streamflow for six gaging stations; several consecutive years of predominantly less than average streamflow indicate drought.

The most severe drought to affect the Hawaiian Islands since streamflow recordkeeping began extended from the late 1930's through most of the 1940's, and the effects were felt on all of the main islands (fig. 4). The drought had a recurrence interval of greater than 50 years except on Molokai, where it had a recurrence interval of about 10 years. Kauai was the first island for which streamflow records indicate less than average flow caused by the drought. Gages on Kawaikoi Stream near Waimea and on the East Branch of North Fork Wailua River near Lihue (fig. 4, sites 1 and 2) recorded less than average streamflow beginning in August 1938. By the early 1940's, the drought had spread to Oahu (site 3), Molokai (site 4), Maui (site 5), and the island of Hawaii (site 6). The drought ended statewide in 1947.

During the 1970's, Molokai and Maui experienced a severe drought that had a recurrence interval of greater than 50 years. The graphs for Halawa Stream near Halawa on Molokai and Honokokau Stream near Honokokau on Maui (fig. 4, sites 4 and 5) illustrate the long duration of this drought. The drought was the most severe on those islands since recordkeeping began in the 1910's. Kauai and Oahu also were affected by the 1970-79 drought, although the drought was less intense on those islands. Streamflow on the island of Hawaii was little affected by this drought as indicated by the annual departure graph for the Wailuku River at Pihonua (fig. 4, site 6).

A moderate to severe drought affected the entire State from 1983 to 1986. Although not as intense on some islands as either the 1938-47 or the 1970-79 drought, nor as long, this drought caused cumulative streamflow deficits at some gaging stations that rank second for the period of record. The drought recurrence intervals calculated from the streamflow deficits ranged from about 10 to more than 25 years, depending on locality. Of the six gaging stations for which records are shown in figure 4, the recurrence interval was greatest (about 35 years) at the East Branch of the North Fork Wailua River near Lihue, Kauai (site 2).

Although Hawaii has experienced severe droughts, the most detrimental effects usually have been confined to limited areas. Physiography, land use, and location of ground-water sources can determine which areas are most affected by a drought and how severely. Hawaii and Maui usually are the islands most affected by droughts because each has ranches and cultivated areas where ground-water sources have not been developed. Thus, during drought, water has to be imported for the survival of animals and plants.

WATER MANAGEMENT

The Department of Land and Natural Resources, through the Division of Water Resources Management, administers the State's programs in water-resources management and development. Programs include data collection and appraisal of ground- and surface-water resources, climatology, flood prevention and control, administration of regulations, and long-range planning.

A comprehensive cooperative program between the Division of Water Resources Management and the U.S. Geological Survey provides much of the data and analyses essential to the effective management of the State's critical water resources. The State Water Code authorizes the Department of Land and Natural Resources to regulate ground and surface waters, to administer a permit system to divert water, and to require reporting of water use.

The effective management of water resources has required the cooperation and coordination of Federal, State, and local governments. The efforts of these agencies, in addition to the cooperation of private industry and the public, have helped to prevent contamination and excessive ground-water withdrawals. Adherence to land-use regulations has lessened the damage caused by floods.

The water-resources-management plans and regulations in the Hawaii State Water Resources Functional Plan are evaluated periodically. Future water-resources development and flood-control projects will be regulated according to these guidelines.

The State Department of Health administers regulations for the protection of ground and surface water and coastal seawater. These regulations are stringently enforced to preserve water quality and prevent pollution.

Flood-Plain Management.—In 1961, the State legislature designated the Department of Land and Natural Resources as the State flood-control agency. The Division of Water Resources Management has the responsibility within the Department to coordinate the activities of Federal, State, county, and local governments and to develop and establish flood-control planning and water-conservation measures for the State.

The U.S. Geological Survey has provided the surface-water information needed for flood-control projects sponsored by State and local governments. Where necessary to implement flood-control measures, construction was completed by the U.S. Army Corps of Engineers. Flood-plain management and development of flood-insurance-rate maps have been accomplished with the guidance of the Federal Emergency Management Agency.

Flood-Warning Systems.—During emergencies, the State Civil Defense Agency coordinates the activities of all organizations within the State. The role of that agency in flood control is to plan for and respond to flood disasters.

The National Weather Service and the Pacific Tsunami Warning Center report potential flood threats to the State Civil Defense Agency. The information is verified, and the potential effect of the threat is evaluated. If a threat to public safety and property arises, warnings are transmitted to the public through the press, radio, and television.

Water-Use Management During Droughts.—The Department of Land and Natural Resources and county governments manage water use during droughts. Voluntary restraints and conservation practices have been emphasized by these agencies. Mandatory restrictions are rarely needed. Analysis of water-level data from ground-water monitoring wells and pumping wells has been effective in providing early warnings of the need for conservation. Pumpage allocations have been imposed on much of the island of Oahu to maintain a balanced water budget and to prevent seawater intrusion in wells completed in coastal-plain aquifers.

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10238-04
September 3, 2021

Mr. Lafayette Young
150 Puniawa Road
Haiku, HI 96708

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Young:

Thank you for two comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Letter #1

Comment 1: *I care very deeply about this proposed lease of the public water because I am a land owner with frontage along Honopou Stream. TMK 2-9-001-010-0000*

Response 1: We acknowledge your comments and understand that you are a land owner along Honopou Stream.

Comment 2: *The Draft EIS needs to address my following concerns.*

The DEIS needs to address in engineering terms, with supporting calculations, the anticipated unintended consequences of restoring the Honopou and other designated streams to 100% flow.

The State Bridge on State Land that crosses the Honopou Stream will frequently go completely under water during a rainy period, particularly when a freshet empties its contents on the region.

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The Bridge is sitting on dry stacked blue rock. The State refuses to maintain the Bridge!

Response 2: We acknowledge your comments and concerns related to bridge that crosses Honopou Stream. Regarding your comment that the EIS needs to address in engineering term, with supporting calculations, of the impacts of restoring Honopou Stream, please note that this is outside the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

However, please note that bridge design standards utilize rainfall recurrence intervals for 10, 50, and 100-year storm recurrence intervals for hydraulic analysis and design of the bridge and its ability to pass required storm flows within streams. The storm recurrence intervals are much higher than IIFS volumes required within Honopou Stream and any of the other streams with ordered restoration of flows. Restoration of normal daily stream flows is only a very small percentage of the total flow during these storm flow conditions that cause damage or flooding.

Comment 3: *An even more pressing concern is the capability of the tunnel beneath the Hana Highway at Honopou to carry all of the stream flow under flood conditions. I direct your attention to the Right of Way map, Hana Belt Road, Federal Aid Project No 32A which illustrates a subterranean tunnel but offers no dimensions or support calculations as to its carrying capacity.*

Response 3: We acknowledge your comments. As noted in Response #2 above, bridge design standards utilize rainfall recurrence intervals for 10, 50, and 100-year storm recurrence intervals for hydraulic analysis and design of the bridge and its ability to pass required storm flows within streams. The storm recurrence intervals are much higher than IIFS volumes required within Honopou Stream and any of the other streams with ordered restoration of flows. Restoration of normal daily stream flows is only a very small percentage of the total flow during these storm flow conditions that cause damage or flooding.

Comment 4: *The tunnel, during my past 50 years in the neighborhood, frequently clogs with debris and vegetation that severely impacts the tunnels carrying capacity. Frequently mauka homeowners are denied access to their homes when the tunnel clogs and stream water backs up into the valley.*

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Response 4: We acknowledge your comments and understand that you have witnessed frequent clogs with debris and vegetation of the tunnel underneath the bridge that crosses Honopou Stream. However, please note that as discussed in Section 4.3.3 of the Draft EIS:

According to the FEMA Flood Insurance Rate Maps (FIRM), the License Area is predominantly designated as Zone "X", "Areas determined to be outside the 0.2% annual chance floodplain." (See Figure 4-28) A number of adjacent parcels along the makai edge of the License Area lie in areas designated as Zone "A", "Areas subject to inundation by the 1-percent-annual-chance flood event generally determined using approximate methodologies." However, flooding in East Maui generally caused by freshets...

...In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of the DHHL. No significant impacts on flooding or tsunami in East Maui are anticipated.

Hence, no impacts as a result of the Proposed Action are anticipated.

Comment 5: *In the early 1940's, when the Hana Belt Road was designed and built, EMI was already diverting millions of gallons per day from the Honopou Stream. If the highway design team did not account for the already diverted water when they designed the tunnel it maybe that the tunnel cannot handle the Honopou Stream restored to full flow!*

Response 5: As noted in Response #2 above, bridge design standards utilize rainfall recurrence intervals for 10, 50, and 100-year storm recurrence intervals for hydraulic analysis and design of the bridge and its ability to pass required storm flows within streams. The storm recurrence intervals are much higher than IIFS volumes required within Honopou Stream and any of the other streams with ordered restoration of flows. Restoration of normal daily stream flows is only a very small percentage of the total flow during these storm flow conditions that cause damage or flooding.

Comment 6: *The DEIS must include an engineering analysis of the water carrying capacity of the tunnel under the Hana Belt Road at Honopou.*

The DEIS must include an engineering analysis of the risk to the Honopou Bridge when it is subjected to total immersion and fast moving stream flows.

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Response 6: As noted in Response #2 above, please note that this is outside the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 7: *The DEIS must include a survey of stream frontage lots, and loi that serve taro growers to identify all unintended consequences of restoring the Honopou Stream to full flow.*

Altho my concerns are local and personal, these same demands should extend to the entire lease area to mitigate unintended consequences.

Response 7: We acknowledge your comments. However, please note that it is not within the scope of the EIS to survey all stream frontage lots and lo‘i that serve kalo farmers. As noted in Response #2 above, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Letter #2

Comment 8: *You will find this interesting. I've highlighted the event for Honopou Stream.*

6,000 cu ft/sec, plus whatever water was drawn off in the ditches may overwhelm the tunnel passing water under the Hana Hwy @ Honopou.

Response 8: We acknowledge your comments. Please note that the quote you highlighted in your letter states that, "...*Honopou Stream near Huelo on Maui (fig.3, site 3) had record peak discharges with a recurrence interval of greater than 100 years.*" Hence, as noted in Response #2 above bridge design standards utilize rainfall recurrence intervals for 10, 50, and 100-year storm recurrence intervals for hydraulic analysis and design of the bridge and its ability to pass required storm flows within streams. The storm recurrence intervals are much higher than IIFS volumes required within Honopou Stream and any of the other streams with ordered restoration

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of flows. Restoration of normal daily stream flows is only a very small percentage of the total flow during these storm flow conditions that cause damage or flooding.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beauprez

From: laurakaakua@everyactioncustom.com on behalf of Laura Kaakua
<laurakaakua@everyactioncustom.com>
Sent: Thursday, November 7, 2019 10:16 PM
To: Public Comment
Subject: Alexander and Baldwin's Draft Environmental Impact Statement Comments

Dear Mr. Matsukawa,

I am a lineal descendant of Puakea and Pa'akea ahupua'a in Nahiku, Maui, and I oppose Alexander and Baldwin's proposal to further divert the streams of East Maui. My 'ohana owns the ahupua'a of Puakea and Pa'akea through Land Commission Award 209 to Stephen Grant. The lands passed down the family line to my great great great grandparents Anna Loika Alo and Boniface Achong who lived, farmed, fished, and raised their family on the land. My great grandmother Maria Victoria (Nena) Li Won, who passed just a couple years ago, was raised by her grandparents Anna and Boniface on this 'aina as a young child. Our 'ohana still owns the makai portion of Pa'akea ahupua'a from Hana Highway to the ocean, but East Maui Irrigation asserts ownership over the mauka portion of Pa'akea ahupua'a and the entirety of Puakea ahupua'a. These lands claimed by East Maui Irrigation now have water diversions running through them, which divert the vast amounts of water that would otherwise flow makai in Waia'aka, Puakea, and Pa'akea Streams.

The old maps name the stream and gulch at the Eastern boundary of Pa'akea ahupua'a as "Waiaaka", the stream and gulch between Pa'akea and Puakea ahupua'a as "Paakea", and the stream and gulch at the Western boundary of Puakea ahupua'a as "Puakea". Pa'akea ahupua'a also includes Pali Spring. My family is still tied to these lands, and our family's presence on the lands remains through the crops planted along the stream, and the now towering ti leaf, banana trees, and mango trees planted over 100 years ago. 'Ohia, 'uluhe, and hapu'u ferns still blanket much of these lands, with native plants 'ekaha, palapalai, pala'a, and 'ie'ie still present. 'O'opu, hihiwai, and 'opae are still in the streams here. We still spend time on the property as a family (I visited last year with cousins), and many in my family have favorite childhood memories of camping on this land and catching 'opae in the stream and fish for dinner. To honor my kupuna (some of whom are buried on this land) and retain our connection and kuleana to this family land, my cousins and I hope to reopen lo'i, gardens, and care for the streams.

Comments on Puakea Stream: The Draft EIS states, "The Draft Environmental Impact Statement identifies 37 streams within the License Area; Puakea Stream was not recognized by CWRM but is a stream within the License Area that is diverted by the EMI Aqueduct System." Puakea Stream is a vital part of the Nahiku ecosystem and cultural heritage. Its flow is diminished due to mauka EMI diversions, and it also needs to have streamflow restored.

Comments on Pa'akea Stream: The Draft EIS states, "Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohakamoā, Ha'ipua'ena, Nua'ailua, Waia'aka and Hanawī. None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147)." I would like to restore our lo'i and grow taro along Pa'akea Stream, Puakea Stream, and Waia'aka Stream if the stream flow increases enough to make taro cultivation viable. Again, our family sustained themselves entirely on this land, eating, drinking, and gathering from the streams and ocean which was also nourished by the freshwater from the streams. Reviving this land to once again grow food is possible, but we need the water to return the land to productivity.

There is already so much water being diverted from East Maui Streams. If the State allows even more water to be diverted, our traditional customary practices cannot be perpetuated, and our native species (in particular 'o'opu, hihiwai, and 'opae) which remain in the streams of Puakea, Pa'akea, Waia'aka and others will be put at immediate risk. Stream flow is already low. Please do not allow increased diversions, and help us all to achieve cool clean and connected streamflow from mauka to makai.

Sincerely,
Laura Kaakua
HANA Hwy Hana, HI 96713
laurakaakua@gmail.com

Dalton Beauprez

From: Laura Kaakua <laurakaakua@gmail.com>
Sent: Thursday, November 7, 2019 10:25 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Comments on Alexander & Baldwin's Draft EIS

Mr. Ian Hirokawa, Board of Land and Natural Resources.
 Email: ian.c.hirokawa@hawaii.gov

Mr. Earl Matsukawa AICP, Wilson Okamoto, Inc. (A&B/EMI).
 Email: waterleaseeis@wilsonokamoto.com

Aloha,

I am a lineal descendant of Puakea and Pa'akea ahupua'a in Nahiku, Maui, and am providing comments in my personal rather than professional capacity. I oppose Alexander and Baldwin's proposal to further divert the streams of East Maui. My 'ohana owns the ahupua'a of Puakea and Pa'akea through Land Commission Award 209 to Stephen Grant. The lands passed down the family line to my great great great grandparents Anna Loika Alo and Boniface Achong who lived, farmed, fished, and raised their family on the land. My great grandmother Maria Victoria (Nena) Li Won, who passed just a couple years ago, was raised by her grandparents Anna and Boniface on this 'aina as a young child. Our 'ohana still owns the makai portion of Pa'akea ahupua'a from Hana Highway to the ocean, but East Maui Irrigation asserts ownership over the mauka portion of Pa'akea ahupua'a and the entirety of Puakea ahupua'a. These lands claimed by East Maui Irrigation now have water diversions running through them, which divert the vast amounts of water that would otherwise flow makai in Waia'aka, Puakea, and Pa'akea Streams.

The old maps name the stream and gulch at the Eastern boundary of Pa'akea ahupua'a as "Waiaaka", the stream and gulch between Pa'akea and Puakea ahupua'a as "Paakea", and the stream and gulch at the Western boundary of Puakea ahupua'a as "Puakea". Pa'akea ahupua'a also includes Pali Spring. My family is still tied to these lands, and our family's presence on the lands remains through the crops planted along the stream, and the now towering ti leaf, banana trees, and mango trees planted over 100 years ago. 'Ohia, 'uluhe, and hapu'u ferns still blanket much of these lands, with native plants 'ekaha, palapalai, pala'a, and 'ie'ie still present. 'O'opu, hihiwai, and 'opae are still in the streams here. We still spend time on the property as a family (I visited last year with cousins), and many in my family have favorite childhood memories of camping on this land and catching 'opae in the stream and fish for dinner. To honor my kupuna (some of whom are buried on this land) and retain our connection and kuleana to this family land, my cousins and I hope to reopen lo'i, gardens, and care for the streams.

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There is already so much water being diverted from East Maui Streams. If the State allows even more water to be diverted, our traditional customary practices cannot be perpetuated, and our native species (in particular 'o'opu,

hihiwai, and 'opae) which remain in the streams of Puakea, Pa'akea, Waia'aka and others will be put at immediate risk. Stream flow is already low. Please do not allow increased diversions, and help us all to achieve connected streamflow from mauka to makai.

Mahalo,
Laura Kaakua



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Ms. Laura Kaakua
laurakaakua@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Kaakua:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am a lineal descendant of Puakea and Pa‘akea ahupua‘a in Nahiku, Maui, and I oppose Alexander and Baldwin’s proposal to further divert the streams of East Maui. My ‘ohana owns the ahupua‘a of Puakea and Pa‘akea through Land Commission Award 209 to Stephen Grant. The lands passed down the family line to my great great great grandparents Anna Loika Alo and Boniface Achong who lived, farmed, fished, and raised their family on the land. My great grandmother Maria Victoria (Nena) Li Won, who passed just a couple years ago, was raised by her grandparents Anna and Boniface on this ‘āina as a young child. Our ‘ohana still owns the makai portion of Pa‘akea ahupua‘a from Hana Highway to the ocean, but East Maui Irrigation asserts ownership over the mauka portion of Pa‘akea ahupua‘a and the entirety of Puakea ahupua‘a. These lands claimed by East Maui Irrigation now have water diversions running through them, which divert the vast amounts of water that would otherwise flow makai in Waia‘aka, Puakea, and Pa‘akea Streams.*

Response 1: We acknowledge your comments and understand that you are a land owner within the Pa‘akea ahupua‘a. Please note that Pa‘akea Stream was one of the streams subject to the CWRM D&O which was categorized as a connectivity stream. Hence, Pa‘akea Stream will see restored flows as discussed in Section 1.3.4 of the Draft EIS.

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Comment 2: *The old maps name the stream and gulch at the Eastern boundary of Pa‘akea ahupua‘a as "Waiaaka", the stream and gulch between Pa‘akea and Puakea ahupua‘a as "Paakea", and the stream and gulch at the Western boundary of Puakea ahupua‘a as "Puakea". Pa‘akea ahupua‘a also includes Pali Spring. My family is still tied to these lands, and our family’s presence on the lands remains through the crops planted along the stream, and the now towering ti leaf, banana trees, and mango trees planted over 100 years ago. ‘Ohia, ‘uluhe, and hapu‘u ferns still blanket much of these lands, with native plants ‘ekaha, palapalai, pala‘ā, and ‘ie‘ie still present. ‘O‘opu, hihiwai, and ‘opae are still in the streams here. We still spend time on the property as a family (I visited last year with cousins), and many in my family have favorite childhood memories of camping on this land and catching ‘opae in the stream and fish for dinner. To honor my kupuna (some of whom are buried on this land) and retain our connection and kuleana to this family land, my cousins and I hope to reopen lo‘i, gardens, and care for the streams.*

Comments on Puakea Stream: The Draft EIS states, "The Draft Environmental Impact Statement identifies 37 streams within the License Area; Puakea Stream was not recognized by CWRM but is a stream within the License Area that is diverted by the EMI Aqueduct System." Puakea Stream is a vital part of the Nahiku ecosystem and cultural heritage. Its flow is diminished due to mauka EMI diversions, and it also needs to have streamflow restored.

Response 2: We acknowledge your comments. With regards to Puakea Stream, please note that Puakea Stream was assumed to be an individual stream in the Draft EIS. However, it has since been determined that Puakea is in fact a tributary to Pa‘akea Stream, which as noted in Response #1 has been restored as a connectivity stream, as shown on page 1-5 of the Final EIS.

Comment 3: *Comments on Pa‘akea Stream: The Draft EIS states, "Streams that are set at connectivity flow are: Kapā‘ula, Pa‘akea, Pua‘aka‘a, Puohakamoā, Ha‘ipua‘ena, Nua‘ailua, Waia‘aka and Hanawī. None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147)." I would like to restore our lo‘i and grow taro along Pa‘akea Stream, Puakea Stream, and Waia‘aka Stream if the stream flow increases enough to make taro cultivation viable. Again, our family sustained themselves entirely on this land, eating, drinking, and gathering from the streams and ocean which was also nourished by the freshwater from the streams. Reviving this land to once again grow food is possible, but we need the water to return the land to productivity.*

Response 3: We acknowledge your comments. Please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed

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Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for taro were identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

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For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in the included pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 4: *There is already so much water being diverted from East Maui Streams. If the State allows even more water to be diverted, our traditional customary practices cannot be perpetuated, and our native species (in particular ‘o‘opu, hihiwai, and ‘opae) which remain in the streams of Puakea, Pa‘akea, Waia‘aka and others will be put at immediate risk. Stream flow is already low. Please do not allow increased diversions, and help us all to achieve cool clean and connected streamflow from mauka to makai.*

Response 4: Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to ‘ōpae, ‘o‘opu, pūpūlo‘i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail);

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Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the

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Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the

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Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

The HSHEP model used in Trutta Environmental Solutions' report (Appendix A), it clearly and directly addresses the impacts of streamflow diversion on the native amphidromous stream species (including opae, 'o'opu and hīhīwai). Due to an increase in streamflow under the Proposed Action when compared to historical diversion rates, opae, 'o'opu and hīhīwai are anticipated to have an increase in HU. However, these HU will slightly decrease from current conditions as more water is gradually diverted as the Mahi Pono farm plan develops to full build-out as outlined in Section 4.2.1 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beauprez

From: Appraisals Maui <appraisalsmaui@hawaii.rr.com>
Sent: Sunday, September 29, 2019 12:36 PM
To: Public Comment
Subject: Water Lease

I am against the water lease from Nahiku, Ke'anae, Honomanu and Huelo area. The water should be used for agriculture in those areas and not be diverted for A&B or any other developers use. I truly don't trust them.

Lea Giddens
2894 W. Lelehuna Place
Haiku, HI 96708



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 September 3, 2021

Lea Giddens
 2894 W. Lelehuna Place
 Haiku, HI 96708
 appraisalsmaui@hawaii.rr.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Lea Giddens:

Thank you for comments dated September 29, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am against the water lease from Nahiku, Ke'anae, Honomanu and Huelo area. The water should be used for agriculture in those areas and not be diverted for A&B or any other developers use. I truly don't trust them*

Response 1: We acknowledge your comments and understand that you are in opposition of the Proposed Action.

With regards to your comment that the water should be used for agriculture in East Maui, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic

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challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

Dalton Beauprez

From: watercranials@everyactioncustom.com on behalf of Linda Andersen
<watercranials@everyactioncustom.com>
Sent: Thursday, November 7, 2019 10:15 PM
To: Public Comment
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement

Dear Mr. Matsukawa,

Regarding Alexander and Baldwin's Draft EIS, its long past time to take care of the aina which requires flowing water in its streams to support diminishing native wildlife and the people of this land.

Let's look to replenishing the water sheds rather than diverting more water to a corporation that has monopolized water resources for at least 100 years, and open more EMI areas to public access.

The devastating effects of A & B's reign on the environment and cultural practitioners should be mitigated rather than continued and expanded.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Linda Andersen
Kula, HI 96790
watercranials@gmail.com



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September 3, 2021

Ms. Linda Andersen
watercranials@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Andersen:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Regarding Alexander and Baldwin’s Draft EIS, its long past time to take care of the aina which requires flowing water in its streams to support diminishing native wildlife and the people of this land.*

Let’s look to replenishing the water sheds rather than diverting more water to a corporation that has monopolized water resources for at least 100 years, and open more EMI areas to public access.

Response 1: We acknowledge your comments. Please note that the HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to determine an appropriate balance between instream and offstream water uses. The proposed lease scenarios in the EIS (Proposed Action and the No Action Alternative) both mitigate rather than expand stream diversions and their impacts. Impacts to stream habitats and native amphidromous stream species, are analyzed in Section 4.2.1 and Appendix A of the EIS.

Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Please note that the primary focus of the survey conducted for East Maui

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Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

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The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83 of the Final EIS.

Impacts to terrestrial flora and fauna, including threatened and endangered species, are analyzed in Section 4.4 and Appendix C of the EIS. Specifically, as it relates to invasive species, it is noted in Appendix C that low-elevation portions of the License Area are already highly impacted by invasive plants. However, it is noted in Appendix C that high-elevation portions of the License Area are predominately dominated by native species and is very likely to contain habitat for several endangered or threatened species. Impacts related to flora and fauna as a result of the Proposed Action are discussed in Section 4.4 of the EIS. Please note that Section 4.4.1 and Section 4.4.2 have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Comment 2: *The devastating effects of A & B's reign on the environment and cultural practitioners should be mitigated rather than continued and expanded.*

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Response 2: Regarding your comment about the devastating effects of A&B's reign on the environment, please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the

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Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown in pages 4-331 to 4-336.

With regards to cultural impacts, the CIA acknowledges that the Proposed Action may impact Native Hawaiian cultural resources and practices and provides for several recommendations to mitigate those impacts. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waiānu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waiānu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula,

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Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would

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keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all constitutionally protected traditional and customary rights.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

Dalton Beuprez

From: Lorraine Zane <kulazane@hawaii.rr.com>
Sent: Thursday, November 7, 2019 12:20 PM
To: Public Comment; ian.c.hirokawa@hawaii.gov
Subject: RE: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke`ānea, Honomanū and Huelo License Areas

To: Ian Hirokawa, State of Hawai`i Board of Land & Natural Resources
Earl Matsukawa, Wilson Okamoto Corporation

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas

From: Lorraine Zane, Maui resident for 44yrs, retired RN, wife, and mother of 2.

Not extending the 45-day period for public comment on a document that is 2,700 pages is unreasonable, considering a public trust resource request is being made. The request of a permit to guarantee water for 30 years at a time when global warming and other environmental concerns are at the forefront does not take into consideration stewardship for Maui's natural resources and public concerns that should not be controlled by private entities. For this very reason, this comment period should have been extended.

The Final EIS should contain information that can adequately address these questions and concerns:

Why weren't the alternatives (if the 30-year lease is denied) outlined in the Draft EIS evaluated more thoroughly? Why not evaluate possible benefits also, rather than focusing on possible negatives? A Water Lease with Different Terms could evaluate a Systematic Yearly Reduction to incentivize best water use practices.

The Final EIS should include a more thorough examination and evaluation of alternative actions.

The Final EIS should include an analysis of the applicant's currently owned wells that could be used for their agricultural irrigation, and if they have been properly maintained, and water assets properly distributed by the current leasees.

Variations in their crop types, the land being utilized and future water demands are uncertain.

The Final EIS should address potential impacts on this lease if water needs increase/decrease or if the economic viability of the applicant cannot be sustainable by forecasted agricultural practices.

This subject Draft EIS contains no assurances that current streamflow standards will be monitored for compliance; Currently, 10 E. Maui streams have not been "restored".

The Final EIS should contain information regarding these 10 streams and their impacts on/contributions to, the water delivery system.

Freshwater interface with the ocean at the muliwai is one of the most plentiful areas for fish and plantlife that comprise much of the food we include in our diets.

For the health and productivity of our fisheries and nearshore gathering areas, the Final EIS should include an evaluation and examination of the possible impacts of this 30-year lease on our fisheries and nearshore gathering areas.

Appendix D, Historical Structure Assessment of the subject Draft EIS is inadequate, as it is stated that the report “is less an inventory, and more a reference/typology guide for irrigation systems and their components”. No real data concerning non-evaporative loss throughout the delivery system is addresses, to help calculate true use, loss and recharge.

The Final EIS should include a proper structure assessment that involves evaluating the viability of these structures that will be part of the daily water delivery system. The report should not just be a research article or guideline.

Final EIS should include that all of the above concerns have been addressed and that all the residents of Maui County have a way to approve or disapprove a proposal that effects all citizens of Maui County so profoundly. REMEMBER:

OLA I KA WAI

Sincerely,

Lorraine C. Zane
Keokea, Hawaii



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Ms. Lorraine Zane
kulazane@hawaii.rr.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Zane:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Not extending the 45-day period for public comment on a document that is 2,700 pages is unreasonable, considering a public trust resource request is being made. The request of a permit to guarantee water for 30 years at a time when global warming and other environmental concerns are at the forefront does not take into consideration stewardship for Maui’s natural resources and public concerns that should not be controlled by private entities. For this very reason, this comment period should have been extended.*

Response 1: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 2: *The Final EIS should contain information that can adequately address these questions and concerns:*

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Letter to Ms. Lorraine Zane

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Why weren't the alternatives (if the 30-year lease is denied) outlined in the Draft EIS evaluated more thoroughly? Why not evaluate possible benefits also, rather than focusing on possible negatives? A Water Lease with Different Terms could evaluate a Systematic Yearly Reduction to incentivize best water use practices. The Final EIS should include a more thorough examination and evaluation of alternative actions.

Response 2: HRS § 343-2 defines "environmental impact statement" as "an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects." The Draft EIS discloses the environmental effects of the proposed Water Lease, and the impacts of the proposed Water Lease on the economic welfare, social welfare, and cultural practices of the community and State, as well as the effects of the economic activities arising out of the proposed Water Lease, and presents measures to minimize adverse effects, and also presents alternatives to the Water Lease and the environmental effects of those alternatives. Moreover, the Draft EIS was prepared in compliance with the relevant rules, including HAR § 11-200-16 and 11-200-17, and the Draft EIS includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement.

Specifically, Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3. Moreover, based on comments received on the Draft EIS, the alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the Final EIS. However, please note that the alternatives that were fully analyzed are those that were deemed reasonable to achieve the objectives of the Proposed Action, as per HAR § 11-200-17(f).

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With regards to the Alternative Lease Duration, Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

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Comment 3: *The Final EIS should include an analysis of the applicant's currently owned wells that could be used for their agricultural irrigation, and if they have been properly maintained, and water assesses properly distributed by the current leasees.*

Response 3: Regarding the use of well water, Draft EIS Section 2.1.4 (Central Maui Field System) explains:

In addition to the surface water imported from the EMI Aqueduct System to the Central Maui field irrigation system, the irrigation infrastructure includes fifteen brackish water wells that can supplement surface water to approximately 17,200 acres of the plantation at the lower elevations (CWRM D&O, FOF 738). These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739).

Draft EIS Figure 2-5 (Central Maui Infrastructure Map) identifies the wells in the Central Maui agricultural fields. However, please note that Section 2.1.4 has been revised in the Final EIS to more accurately describe the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono, and clarifies that only 10 of the 15 wells are on Mahi Pono lands and thus available for use by Mahi Pono, as shown in pages 2-24 to 2-25 of Final EIS.

The reference to 15 brackish wells was derived from the CWRM D&O, FOF 738, as that was the number of brackish wells that A&B utilized during its sugar cane operations. However, one of the 15 wells referred to, State Well No. 5128-002, does not serve the Central Maui agricultural fields and four of the other brackish wells are on lands that are not owned by Mahi Pono. As such, Mahi Pono has access to only 10 such wells. Draft EIS Figure 2-5 has been revised, as shown in the included pages 2-24 of the Final EIS, to more accurately depict the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields.

Moreover, please see the table below, which has been added to Section 4.2.2 of the Final EIS as shown in page 4-75.

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State Well No.	TMK Number	Installed Pump Capacity (MGD)	Typical Range of Chlorides (MG/L) from 2003 through 2014 ¹	CWRM Delineated Aquifer System
4825-001	(2) 3-8-004:001	20.448	225 to 350	Pā‘ia
5226-002	(2) 3-8-006:001	24.048	350 to 550	Kahului
5224-002	(2) 3-8-003:004	15.120	350 to 550	Pā‘ia
5323-001	(2) 3-8-001:006	20.016	No data	Pā‘ia
5424-001	(2) 3-8-001:007	5.760	400 to 700	Pā‘ia
5522-001	(2) 2-5-005:021	8.640	350 to 525	Pā‘ia
5422-001	(2) 2-5-005:054	10.080	350 to 525	Pā‘ia
5422-002	(2) 2-5-005:020	11.664	325 to 475	Pā‘ia
5321-001	(2) 2-5-005:019	30.240	400 to 1600	Pā‘ia
5520-001	(2) 2-7-004:032	10.080	900 to 1600	Ha‘ikū

Please note that the salinity levels fluctuate and therefore a range was provided.

Comment 4: *Variations in their crop types, the land being utilized and future water demands are uncertain.*

Response 4: Please note that Mahi Pono’s farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e. orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community. The calculations of future water requirements (year 2030) are presented in Table 3 of Appendix I, “East Maui Water Lease: Agricultural and Related Economic Impacts”. The per-acre water requirements used in the calculations are based on published crop studies, farming experience with specific crops, and evapotranspiration rates for Central Maui.

Comment 5: *The Final EIS should address potential impacts on this lease if water needs increase/decrease or if the economic viability of the applicant cannot be sustainable by forecasted agricultural practices.*

Response 5: Section 3.2.1 states:

¹ There is limited salinity data prior to 2003 and after December 2014, surface water for irrigation use rapidly declined as A&B ramped down operations prior to closing in 2016.

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The BLNR cannot authorize a lease that allows the use of more water than can be diverted under the CWRM D&O. However, the BLNR could elect to issue a water lease that authorizes the use of a lesser amount of water. Projections of the amount of government water available from the License Area at Honopou stream after taking into account the CWRM D&O, is approximately 87.95 mgd. This amount would be subject to further reduction in accordance with the DHHL reservation once called upon for use by the DHHL. The CWRM estimated that the amount of water potentially available after implementation of the CWRM D&O might be enough for about 90% of the irrigation needs for the approximately 23,000 IAL lands in Central Maui (although it is not clear if the CWRM D&O took into account the future DHHL reservation). However, there are approximately 30,000 agricultural acres in Central Maui (largely, but not exclusively, IAL lands), and Mahi Pono has expressed an intention to farm as much of that land as possible.

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. Under the Reduced Water Volume alternative, depending on the amount of water authorized under the Water Lease, the MDWS may receive no water from the Wailoa Ditch or some amount up to 7.1 mgd. The greater the reduction in the amount authorized under the Water Lease, proportionally less water will be available to the MDWS.

If more or less water were to be required than is planned, then the Mahi Pono farm plan would be adjusted so that the demand for water is limited to the available supply. In practice, this would mean a transfer of acreage between crop farming and unirrigated pasture. If this were to result in a 1% change in crop acreage, then most economic impacts would change by about 1%. This occurs because crop farming dominates the economic impacts, far exceeding the impacts provided by cattle grazing.

As stated in Appendix I the Mahi Pono Farm Plan

... will evolve over time based on a number of factors, including the available supply of surface water, experience which will be gained on crops that grow well in Central Maui, crops that are profitable, the size of the market for profitable crops, etc.

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Another factor would be possible changes in per-acre water requirements.

Comment 6: *This subject Draft EIS contains no assurances that current streamflow standards will be monitored for compliance; Currently, 10 E. Maui streams have not been “restored”.*

Response 6: The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows. Regarding streamflow enforcement, the current East Maui water revocable permits specify that quarterly reports to the BLNR are required. These reports are mandated to include a statement of compliance with the IIFS and identify the total amount of water being diverted from License Area measured at Honopou. It is expected, and the EIS takes into account, that compliance with the IIFS requirements under the CWRM D&O will also be required under the Proposed Action. In compliance with the CWRM D&O streamflow requirements, EMI has adjusted certain movable portions of gates to ensure that streamflow below the gates complies with the IIFS requirements. Compliance with the CWRM D&O IIFS requirements is always subject to CWRM staff verification.

Comment 7: *The Final EIS should contain information regarding these 10 streams and their impacts on/contributions to, the water delivery system.*

Response 7: Your comment is unclear. Please note that the 10 streams we assume that you are referring to are the 10 streams ordered to be fully restored which means they can no longer be diverted by the EMI Aqueduct System. Hence, they will not be contributing to the EMI Aqueduct System.

Comment 8: *Freshwater interface with the ocean at the muliwai is one of the most plentiful areas for fish and plantlife that comprise much of the food we include in our diets. For the health and productivity of our fisheries and nearshore gathering areas, the Final EIS should include an evaluation and examination of the possible impacts of this 30-year lease on our fisheries and nearshore gathering areas.*

Response 8: We acknowledge your comments. Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur

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in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included

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in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83 of the Final EIS.

Comment 9: *Appendix D, Historical Structure Assessment of the subject Draft EIS is inadequate, as it is stated that the report "is less an inventory, and more a reference/typology guide for irrigation systems and their components". No real data concerning non-evaporative loss throughout the delivery system is addresses, to help calculate true use, loss and recharge.*

Response 9: We respectfully disagree as this was not within the scope of that document. The scope of the Historical Structure Assessment was to determine the historical architectural significance of the EMI Aqueduct System and its various structures. We assume that your comment relates to the physical condition of the EMI Aqueduct System. In this regard, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, "Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)" the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System.

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Comment 10: *The Final EIS should include a proper structure assessment that involves evaluating the viability of these structures that will be part of the daily water delivery system. The report should not just be a research article or guideline.*

Response 10: As noted in Response #9 above, , the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System. It should be noted Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown in page 2-25.

Comment 11: *Final EIS should include that all of the above concerns have been addressed and that all the residents of Maui County have a way to approve or disapprove a proposal that affects all citizens of Maui County so profoundly. REMEMBER:OLA I KA WAI*

Response 11: We acknowledge your comments and please note that we provided you with detailed responses to each of your points above. With regards to your comment about a way to approve or disapprove a proposal, please note that an EIS is an environmental disclosure document and does not authorize any decision.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.² Should you wish to request a copy of the Final EIS or portions thereof, please

² Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

Dalton Beauprez

From: maile magalianes <mmagalianes@yahoo.com>
Sent: Thursday, November 7, 2019 1:22 PM
To: ian.c.hiokawa@hawaii.gov; Public Comment
Subject: Comments on DEIS proposed by A&B/EMI

To Mr. Earl Matsukawa,

Aloha and Mahalo for taking your time to accept my comments on the Draft EIS for the Proposed Water Lease for the Nahiku, Keanae, Honomanu, and Huelo License Areas.

I am a Native Hawaiian Haiku resident who gathers from East Maui and am concerned that no one is taking care of much of the watershed.

The Draft EIS needs to include the following information:

A discussion on methods restoring the 13 streams in the Honopou to Kailua area, where my ohana and others live, farm, and gather.

All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. The DEIS needs to discuss the impacts of continuing those diversions which will decimate 85% of native stream life habitat and negatively impact thousands of local residents. The EIS also needs to include a full archaeological survey since there are many unrecorded archaeological sites in the lease area that could be affected by resumed diversions.

I am humbly asking that the DEIS include this very important information. Mahalo for the opportunity to submit comments on this Draft EIS.

Aloha,

Maile Magalianes, resident of Haiku, Maui.

[Sent from Yahoo Mail for iPhone](#)

Dalton Beauprez

From: maile magalianes <mmagalianes@yahoo.com>
Sent: Thursday, November 7, 2019 1:46 PM
To: ian.c.hiokawa@hawaii.gov
Cc: Public Comment
Subject: Comments on DEIS proposed by A&B/EMI

To Mr. Earl Matsukawa,

Aloha and Mahalo for taking your time to accept my comments on the Draft EIS for the Proposed Water Lease for the Nahiku, Keanae, Honomanu, and Huelo License Areas.

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I am humbly asking that the DEIS include this very important information. Mahalo for the opportunity to submit comments on this Draft EIS.

Aloha,

Maile Magalianes, resident of Haiku, Maui.

[Sent from Yahoo Mail for iPhone](#)



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Ms. Maile Magalianes
mmagalianes@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Magalianes:

Thank you for your two comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Aloha and Mahalo for taking your time to accept my comments on the Draft EIS for the Proposed Water Lease for the Nahiku, Keanae, Honomanu, and Huelo License Areas.*

I am a Native Hawaiian Haiku resident who gathers from East Maui and am concerned that no one is taking care of much of the watershed.

Response 1: We acknowledge your comments and understand that you are a Native Hawaiian resident that gathers from the East Maui region. With regards to your comment that you are concerned that no one is taking care of the watershed, A&B was a founding member of the East Maui Watershed Partnership (EMWP), which was the first watershed partnership in the State of Hawai‘i and which served as a model for other watershed partnerships throughout the State. The lands under the jurisdiction of the East Maui Watershed Partnership span over 100,000 acres which includes the entire License Area. The License Area is actively managed by the multiple agencies and organizations, including EMWP, Maui Invasive Species Committee (MISC), DLNR, etc., in partnership with EMI.

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EMI continues to work with MISC by reporting sighting of invasive weeds and coordinating access in these areas, which are well below the 3,000' level. EMI personnel also monitor the License Area for signs of feral ungulates.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Comment 2: *The Draft EIS needs to include the following information:*

A discussion on methods restoring the 13 streams in the Honopou to Kailua area, where my ohana and others live, farm, and gather.

All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. The DEIS needs to discuss the impacts of continuing those diversions which will decimate 85% of native stream life habitat and negatively impact thousands of local residents.

Response 2: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

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Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided in pages 4-61 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 3: *The EIS also needs to include a full archaeological survey since there are many unrecorded archaeological sites in the lease area that could be affected by resumed diversions.*

Response 3: We respectfully disagree with your comment that an archeological survey is required for the Proposed Action. Please note that correspondence from SHPD dated January 27,

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2017 and October 6, 2017 are appended to Draft EIS Appendix E (Archaeological Literature Review and Field Inspection), confirming SHPD's position on this issue. Issuance of the Water Lease is not anticipated to affect any historic property, aviation artifacts, or burial site.

As discussed in Draft EIS Section 4.5 (Historic and Archaeological Resources) the Proposed Action does not involve any new construction or significant ground disturbance within undisturbed areas within the License Area. The Proposed Action continues the use of the EMI Aqueduct System for the transport of surface water, and allows the lessee or its permittees, to maintain and repair existing access roads and trails long-used as part of the EMI Aqueduct System. As discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7, under the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System. Moreover, this was explained to SHPD as discussed in the Archaeological Literature Review and Field Inspection provided as Appendix E of the EIS ("Additional information regarding the proposed Water Lease was provided to the SHPD including the understanding that the proposed Water Lease will not involve any significant ground disturbance

Comment 4: *I am humbly asking that the DEIS include this very important information. Mahalo for the opportunity to submit comments on this Draft EIS.*

Response 4: We appreciate your participation in this EIS process. Please note that we have provided you detailed responses above to each of your points.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

Dalton Beauprez

From: Mark Hyde <hydem001@hawaii.rr.com>
Sent: Sunday, November 3, 2019 10:31 AM
To: Public Comment; ian.c.hirokawa@hawaii.gov
Subject: Oppose (DEIS for) 30 Year Water Lease

I oppose granting a *thirty year lease*.

The rate of change, social and environmental, in our modern world is exponentially faster than that experienced in the past. The internet did not exist 30 years ago nor did iPhones and a host of other technologies and devices. More importantly, the effects of climate change are upon us, impacting our world in ways poorly understood just a decade ago. This rate of change is outstripping humanity's ability to react to the many existential forces now upon us. California wild fires are an immediate and dramatic example of this.

Against this you are being asked to approve *a thirty year lease with no performance deliverables* even though water is held in public trust by the State for the benefit of the people of Hawaii, not private corporations. Given this, a long term lease of precious water resources is, on its face, not in the best interests of the people and should be denied.

Clearly, the response to the request for a long term lease should favor a

- short term lease (5 years, for example),
- clearly defined and objectively measurable performance deliverables, and
- periodic lessee accountability.

Additionally, recognizing that corporation/partnership owners can and do change, stops must be in place to terminate any lease in the event of a material change of ownership.

Recommendation:

- (1) Put Applicants on a short leash;
- (2) Set clear and objectively measurable criteria to gauge whether any lease should be cancelled or extended beyond the initial term or any subsequent term(s) or extension(s);
- (3) Insert self-executing cancelation clauses should the lessee fail to perform; and
- (4) Include a cancellation clause in the event lessee ownership materially changes, whether through sale, merger, acquisition or change in internal stockholders/partner ownership.

Mark G. Hyde
4320 E. Waiola Loop
Kihei, HI 96753
808 344-3358
hydem001@hawaii.rr.com



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September 3, 2021

Mr. Mark Hyde
4320 E. Waiola Loop
Kihei, HI 96753
Hydem001@hawaii.rr.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Hyde:

Thank you for comments dated November 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I oppose granting a thirty year lease.*

Response 1: We acknowledge your comments and understand that you are opposed to the Proposed Action.

Comment 2: *The rate of change, social and environmental, in our modern world is exponentially faster than that experienced in the past. The internet did not exist 30 years ago nor did iPhones and a host of other technologies and devices. More importantly, the effects of climate change are upon us, impacting our world in ways poorly understood just a decade ago. This rate of change is outstripping humanity’s ability to react to the many existential forces now upon us. California wild fires are an immediate and dramatic example of this.*

Response 2: We acknowledge your comments. Climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai‘i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding

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during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown in the pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Comment 3: *Against this you are being asked to approve a thirty year lease with no performance deliverables even though water is held in public trust by the State for the benefit of the people of Hawaii, not private corporations. Given this, a long term lease of precious water resources is, on its face, not in the best interests of the people and should be denied.*

Response 3: Regarding your comment about the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

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Comment 4: *Clearly, the response to the request for a long term lease should favor a*

- *short term lease (5 years, for example),*
- *clearly defined and objectively measurable performance deliverables, and*
- *periodic lessee accountability.*

Additionally, recognizing that corporation/partnership owners can and do change, stops must be in place to terminate any lease in the event of a material change of ownership.

Response 4: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus,

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macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

With regard to performance deliverables, please note that the terms and conditions of the Water Lease are at the discretion of the BLNR. If the BLNR should make performance deliverables as a part of the terms and conditions of the Water Lease, the lessee will comply.

With regards to your comment about change in ownership, The Draft EIS considered alternative ownership / management of the EMI Aqueduct System as discussed in Section 3.1.2 of the Draft EIS contemplates alternative ownership of the EMI Aqueduct System. Also as discussed above, that section of the EIS has been further modified based on the County's TIG Report which was prepared after publication of the Draft EIS as shown in the pages 3-19 to 3-20 of the Final EIS. However, please note that the alternatives that were fully analyzed are those that were deemed reasonable as per HAR § 11-200-17(f). The EMI Aqueduct System is owned by EMI and is not for sale or lease. The EMI Aqueduct System runs through both EMI-owned land and State-owned land. Through a water lease process, the BLNR does not have legal authority to require EMI to allow others to enter upon its lands or use the EMI Aqueduct System, and it would be impossible to operate the EMI Aqueduct System without access to the system in its entirety. As discussed in Response #29 above, the EMI Aqueduct System is owned by EMI, however, the EIS acknowledges that the some of the lands underlying the EMI Aqueduct System are owned by the State. Pursuant to the 1938 Agreement, the Territory of Hawai'i (now the State) granted perpetual easements to EMI for the placement of the EMI Aqueduct System. Therefore, it is unreasonable to assess the comparative impacts of alternatives that seem highly speculative if not outright impossible, such as the EMI Aqueduct System being managed by a public irrigation district, partnership of agencies, or otherwise. Hence, to assess alternative ownership at this point is too speculative and unreasonable.

Comment 5: *Recommendation:*

(1) Put Applicants on a short leash;

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(2) Set clear and objectively measurable criteria to gauge whether any lease should be cancelled or extended beyond the initial term or any subsequent term(s) or extension(s);

(3) Insert self-executing cancelation clauses should the lessee fail to perform; and

(4) Include a cancellation clause in the event lessee ownership materially changes, whether through sale, merger, acquisition or change in internal stockholders/partner ownership.

Response 5: We acknowledge your comments. As noted in Response #4 above, the terms and conditions of the Water Lease are at the discretion of the BLNR. If the BLNR should make these recommendations as a part of the terms and conditions of the Water Lease, the lessee will comply.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: marta greenleaf <greenleaf.maui@yahoo.com>
Sent: Sunday, November 3, 2019 9:29 AM
To: Public Comment
Cc: ian.c.hirokawa@hawaii.gov
Subject: DEIS

This email is my contribution to raise questions within this DEIS that are of concern to the general public of Maui, HI. I am writing my concerns and welcome your responses to my concerns.

Please re-issue another 45 day comment period to allow our community the time to read, understand and ask all questions about an issue that will affect Maui for years to come. This is not an issue to be taken lightly or decided quickly.

1. How many workers will be hired by Mahi Pono to work the land?
 2. Will these workers be hired from the Maui community or brought in from other places?
 3. How will the housing be handled for the workers if they are brought in from another place to work the fields?
 4. Will the workers be unionized to protect them from insufficient pay and unfair worker rights?
 5. The DEIS states that the Central Valley is the best land for growing crops. It turns out that the lands in the Central Valley have only grown sugarcane. How do you see these lands being fit to grow a myriad of crops that are needed to supply food for the residents and visitors to Maui?
 6. In actuality, the upcountry areas of farmland have excellent soils and have grown and, still grow a diverse amount of crops such as onions, cabbage, lettuce, tomatoes, pumpkins, kalo, breadfruit, citrus, avocado, lychee, persimmons, mulberries, coffee, macadamia nuts, yacon, cassava, etc. Why are these lands not mentioned as exceptional growing areas?
 7. How will you prevent the pollution created by 'Phantom Dust'?
 There has been much conversation about the techniques being used right now on the lands below Hali'imaile where the land is continually being tilled and is creating phantom dust, almost daily. This is a potential problem in our future if proper farming practices such as cover crops aren't added to the farm plan. Although, at this time, Hawaii doesn't have a law to prohibit or regulate this dust, there is already concern amongst the community.
- The so-called "dust rule" regulates farm dust, which is mixed with things like dirt and dried cornstalk bits and is technically considered pollution by the U.S. EPA. The agency does limit how much of this particle pollution can be in the air, but just two states—Arizona and California—require farmers to take some dust control measures.
8. Is Roundup being sprayed along the ditches? If so, this is unacceptable since the water would be continually contaminated by a product that now has over 40,000 lawsuits that claim people have been poisoned by Roundup and now have cancer.
 9. What safe plans have been made to keep our ditches clear of debris, weeds and any pathogens that could be flowing through them from dead animals?
 10. How will the ditch water be filtered to add another layer of safe water to be used on our crops?
 11. What will Mahi Pono be legally allowed to do with the water? Will they be able to sell the water to construction/developers.
 12. How would the language read to protect our water supply from being sold to bottlers or other entities that would undermine the community water supply?

Again, please reissue another 45 day comment period to continue this potentially life-altering lease.

Sincerely,

Marta Greenleaf
PO Box 880794
Pukalani, HI 96788

Sent from my iPad



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September 3, 2021

Ms. Marta Greenleaf
P.O. Box 880794
Pukalani, HI 96788
Greenleaf.maui@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Greenleaf:

Thank you for comments dated November 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *This email is my contribution to raise questions within this DEIS that are of concern to the general public of Maui, HI.*

I am writing my concerns and welcome your responses to my concerns.

Please re-issue another 45 day comment period to allow our community the time to read, understand and ask all questions about an issue that will affect Maui for years to come. This is not an issue to be taken lightly or decided quickly.

Response 1: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

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Comment 2: *How many workers will be hired by Mahi Pono to work the land?*

Response 2: At full operations of the Mahi Pono farm plan, currently estimated to occur around 2030, an estimated 790 farming and crop-processing jobs will be provided in Central Maui (direct jobs) (about 160 more jobs than provided by HC&S sugar operations in 2006). As explained in Section 4.7.4:

The increase in employment would be gradual, with most jobs filled by former sugarcane workers, skilled workers from Maui and other islands, recent graduates of agricultural-schools and colleges, and unskilled workers who would receive on-the-job training.

Approximately an additional 227 indirect jobs on Maui will be generated by the purchase of goods and services, for a total exceeding 1,000 new jobs on Maui. Hiring workers will be spread out over a number of years as fields are planted, orchards mature, processing facilities are built, etc. Assuming 10 years to reach full operations, direct employment on Maui will increase by an average of about 80 jobs per year, while total direct and indirect jobs will increase by an average of about 100 jobs per year. The latter figure is less than 8% of the 1,270 annual job increase projected for the years 2020 to 2030 by the State for the County of Maui (DBEDT, "Population and Economic Projections for the State of Hawai'i to 2045, June 2018).

In its first 18 months of existence Mahi Pono had hired over 200 workers, all of whom were living on Maui when hired. They were attracted by the type of work, wages and benefits.

Based on past hiring, nearly all future employees are expected to come from Maui. Also, at least in the near-term, attracting workers should be easier than in the recent past because of the long-term adverse economic effects of COVID-19 on tourism and Maui's economy. It may take years to rebuild the economy, and the Mahi Pono farm plan will contribute significantly to this rebuilding.

Comment 3: *Will these workers be hired from the Maui community or brought in from other places?*

Response 3: As noted in Response #2 above, based on past hiring, nearly all future employees are expected to come from Maui. However, few off island workers are expected to be absorbed in Maui communities.

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Comment 4: *How will the housing be handled for the workers if they are brought in from another place to work the fields?*

Response 4: Since most farm workers are expected to come from Maui, few homes will be required for workers new to the island. See Response #2 above. In any case, Mahi Pono will pay wages and provide benefits sufficient to attract and retain workers. Under the circumstances, these wages should be sufficient for workers to obtain housing.

Comment 5: *Will the workers be unionized to protect them from insufficient pay and unfair worker rights?*

Response 5: Farm employers will include Mahi Pono and a number of farm and ranch tenants. Agricultural crops and activities will include community farms, orchards, tropical fruits, row and annual crops, energy crops, and ranching. Historically, unionized agricultural workers in Hawai'i were employed primarily by the sugar and pineapple companies.

As discussed in response to your comment above, Mahi Pono will pay wages and provide benefits sufficient to attract and retain workers. It is recognized that some workers could join a union.

Comment 6: *The DEIS states that the Central Valley is the best land for growing crops. It turns out that the lands in the Central Valley have only grown sugarcane. How do you see these lands being fit to grow a myriad of crops that are needed to supply food for the residents and visitors to Maui?*

Response 6: As summarized in Section 4.7.4 of the Draft EIS and Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts):

Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

The basis for this finding is given in Subsection 5 of Appendix I of the Draft EIS, along with Figures 4 to 12 in Appendix I of the Draft EIS.

Moreover, as discussed in Section 5 of Appendix I and Section 4.7.4 of the Draft EIS, the overwhelming majority of the Central Maui agricultural fields (approximately 80%) are rated by

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Letter to Ms. Marta Greenleaf

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the UH Land Study Bureau (LSB) as having the highest Overall Productivity Rating of "A" (on a scale of "A" to "E" with "E" being the lowest soil rating), and a little over 11% has a "B" rating. In other words, about 27,567 acres (90.9%) are high-quality lands rated A or B. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Classification System, developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), and the College of Tropical Agriculture, University of Hawai'i. Approximately 25,669 acres of the Central Maui agricultural fields are classified under the ALISH system as "Prime", which means "agricultural land which is land that is best suited for the production of crops because of its ability to sustain high yields with relatively little input and with the least damage to the environment." Also, as discussed in Section 5.1.4 of the EIS and Section 5 of Appendix I, approximately 22,000 of the 30,000 acres of agricultural fields in Central Maui are designated as Important Agricultural Lands (IAL). Under Article XI, Section 3, of the Constitution of Hawai'i, the State is required to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. HRS Chapter, 205, § 205-41 through § 205-52, provides for the designation of IAL. As stated in HRS Chapter 205: "*The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations.*" IAL designation facilitates the long-term dedication of lands for future agricultural use so long as there is a sufficient supply of water to allow for profitable farming.

However, the EIS and the associated technical studies do not claim that only Central Maui has the substantial potential to grow useful food crops for Maui's future. As discussed in Section 2.1 of the Draft EIS, the scope of this EIS is to assess the Proposed Action which is, "*...to enable the Board of Land and Natural Resources (BLNR)-awarded lessee the right, privilege and authority to enter and go upon State-owned lands for the purposes of developing, diverting, transporting and using government-owned waters. The requested Water Lease would allow the use of government-owned waters from the License Area (approximately 33,000 acres which includes lands within Nāhiku, Ke'anae, Honomanū, and Huelo) through the East Maui Irrigation Company, LLC (EMI) Aqueduct System. Use of that surface water would allow the continued provision of water to enable approximately 30,000 acres of farmland in Central Maui to remain in agriculture.*" Hence, the EIS assesses the action of obtaining a Water Lease and diverting water from East Maui. With regards to agriculture, under the Proposed Action, a major portion of the diverted water from East Maui would be used to irrigate the agricultural fields in Central Maui to continue to transition to diversified agriculture.

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Comment 7: *In actuality, the upcountry areas of farmland have excellent soils and have grown and, still grow a diverse amount of crops such as onions, cabbage, lettuce, tomatoes, pumpkins, kalo, breadfruit, citrus, avocado, lychee, persimmons, mulberries, coffee, macadamia nuts, yacon, cassava, etc. Why are these lands not mentioned as exceptional growing areas?*

Response 7: Please note that the agricultural conditions of Upcountry Maui are assessed in Section 4.7.4 and Appendix I of the Draft EIS, and are summarized as follows:

Upcountry Maui has lands that are suitable for farming, but the general conditions are not as good as those in Central Maui. The farms are small and scattered, solar radiation is less, farms are farther from markets and shipping terminals, water is limited and expensive, ...

Although many crops can be grown and are grown in Upcountry Maui, the major limitation is water. Even if the supply of water to Upcountry Maui could be increased significantly with more surface water from the EMI Aqueduct System, the County's water system would require major modifications since it is designed to deliver potable water to homes, businesses and small farms. Except for the Kula Agricultural Park, the Upcountry Maui Water System is not designed to deliver large volumes of non-potable water to farms. If the supply of surface water were to be increased and the existing distribution system were to be used, then the surface water would have to be treated to potable standards, and the capacity of the distribution system would have to be increased. Alternatively, a separate distribution system for non-potable would have to be developed. Both alternatives would be prohibitively expensive. Before water could be diverted to Upcountry Maui, the modified distribution system would have to be proposed, designed, subjected to environmental studies, approved, financed and built.

Comment 8: *How will you prevent the pollution created by 'Phantom Dust'?*

Response 8: Please note that we are not certain what 'Phantom Dust' is, however, please note that the Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff associated with their current farming activities. As Mahi Pono incrementally increases the amount of farmed acreage over time and crops are planted (particularly the permanent orchard crops), ground disturbance will again be limited, as appropriate and consistent with farming BMPs.

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Comment 9: *There has been much conversation about the techniques being used right now on the lands below Hali'imaile where the land is continually being tilled and is creating phantom dust, almost daily. This is a potential problem in our future if proper farming practices such as cover crops aren't added to the farm plan. Although, at this time, Hawaii doesn't have a law to prohibit or regulate this dust, there is already concern amongst the community.*

Response 9: Please note that Hali'imaile is in the Upcountry Maui and Mahi Pono does not have any agricultural fields in Upcountry Maui. Hence, any agricultural activities occurring outside the Central Maui agricultural fields are outside the scope of this EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS.

With regards to your comment about the State of Hawai'i does not have a law to regulate this dust, as noted in Response #8 above, we are not certain what 'Phantom Dust' is. However, please note that the State of Hawai'i does regulate Fugitive Dust pursuant to Hawai'i Administrative Rules, Section 11-60.1-33.

Comment 10: *The so-called "dust rule" regulates farm dust, which is mixed with things like dirt and dried cornstalk bits and is technically considered pollution by the U.S. EPA. The agency does limit how much of this particle pollution can be in the air, but just two states—Arizona and California—require farmers to take some dust control measures.*

Response 10: We acknowledge your comments. As noted in Responses #8 and #9 above, please note that the Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff associated with their current farming activities. As Mahi Pono incrementally increases the amount of farmed acreage over time and crops are planted (particularly the permanent orchard crops), ground disturbance will again be limited, as appropriate and consistent with farming BMPs. Moreover, please note that the State of Hawai'i does regulate Fugitive Dust pursuant to Hawai'i Administrative Rules, Section 11-60.1-33.

Comment 11: *Is Roundup being sprayed along the ditches? If so, this is unacceptable since the water would be continually contaminated by a product that now has over 40,000 lawsuits that claim people have been poisoned by Roundup and now have cancer.*

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Response 11: Regarding your comment about pesticide use, as discussed in Section 4.12 pesticide use is regulated by both State and Federal law. The use of these chemicals is compliant with all laws regulating pesticide use, and certified commercial applicators are utilized as required. Act 45 which was passed by the 2018 Hawai'i Legislature and effective on January 1, 2019 required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. This report as well as any other report required by law is publicly available from the respective government entity. The State of Hawai'i DOA's Pesticide Branch also provides regulatory oversight over EMI's pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. It is also noted that since January 2020 EMI committed to discontinuing use of Round-Up. This information has been included in the Final EIS as shown in pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations.

Comment 12: *What safe plans have been made to keep our ditches clear of debris, weeds and any pathogens that could be flowing through them from dead animals?*

Response 12: As discussed in the Section 2.1.2 of the Final EIS as shown in page 2-7, under the Proposed Action, "maintenance and repair" involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work may require small tractors and specialized equipment. Maintenance and repair work of this nature in these areas has been going on for more than a century in connection with the operation and maintenance of the EMI Aqueduct System.

Moreover, EMI has established a number of standard operating procedures to address the clean-up of trash and debris within the License Area. Besides recognizing unnecessary debris in the field during routine maintenance tasks, EMI has conducted specific identification and removal operations of debris that has been observed from previous field work. EMI also has in place a practice of removing any equipment and excess materials it brings into the License Area to perform work on the EMI Aqueduct System as soon as the job(s) is completed.

Comment 13: *How will the ditch water be filtered to add another layer of safe water to be used on our crops?*

Response 13: Please note that non-potable water can be applied to agricultural food crops and does not need to go through a treatment process.

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Comment 14: *What will Mahi Pono be legally allowed to do with the water? Will they be able to sell the water to construction/developers.*

Response 14: Under the Proposed Action, other than the water provided to the County of Maui, the water from the State Water Lease will be limited to use for agricultural purposes. The terms of the State Water Lease are expected to limit the use of the East Maui water to agricultural activities by Mahi Pono and its farm tenants. The charge for the water to farm tenants will be based on the delivery cost.

Comment 15: *How would the language read to protect our water supply from being sold to bottlers or other entities that would undermine the community water supply?*

Response 15: None of the water will be sold to bottlers or other entities that could undermine the community water supply. As explained in Response #14 above, the terms of the Water Lease from the State are expected to limit the use of the water to agricultural activities.

Comment 16: *Again, please reissue another 45 day comment period to continue this potentially life-altering lease.*

Response 16: As noted in Response #1 above, the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Mary Trotto <Mary.Trotto@liu.edu>
Sent: Monday, November 4, 2019 8:56 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: response to the Proposed Lease (water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas Draft EIS
Attachments: response to the proposed lease - Executive Summary.docx

Attached are some of my concerns for the EIS listed.

With warmest aloha,
Dr. Mary
Maui County Resident
2430 S Kihei Road
8088750178

Concerns about the document: Lease of the Water Rights for the Nahiku, Ke'anae, Honomanu', and Huelo License Areas. Draft EIS Executive Summary the original complete document of over 2000 pages is too long to be read and responded to prior to the deadline given.

1. Considering the recent questions about the raise in water levels, increased global warming and the accelerated timetable for these two environmental concerns, it does not seem prudent at this time to grant a 30 year lease to Maui County water rights. Important issues concerning the use of our ground water and drinkable water may arise in the next few years which could change the premise that most of this document is based upon.
2. You speak in the document of these water rights going to auction, yet the entire document refers to Mahi Pono, have they already won the auction for these water rights?
3. The document talks about Mahi Pono (the assumed auction winner) will guide their farm plan by BMP- the document mentions non gmo crops and growing food for local consumption. It does not mention, planting draught tolerant, low water requirement crops. It does not mention planting trees as a windbreak to reduce soil temperature and soil drying effect.
4. Mahi Pono is an organization which has no track record here on Maui for farming on a tropical Island. Again it is not prudent to provide a company like Mahi Pono (the assumed auction winner) a 30 year lease, when there is no information concerning how effective the company will be in the farming business. Central Maui farmlands are in a high wind, low rainfall, draught labeled area. Crops grown in this area, unlike sugar cane, would require a total different planting and watering protocol. This is not evident in the executive summary.
5. The summary indicates that Maui Pono will create some 790 jobs, considering that Maui currently has less than 1% unemployment, where will this increase workforce come from. If the farming company plans to bring workers into Maui, they should be aware that Maui is in a housing crisis. There are estimated to be a 1500 unit deficit in affordable housing on Maui currently. If the farming company plans to create 790 jobs, and many of these jobs will be filled by off island non residents, where will they live? Assuming the pay roll for these jobs would require the bulk of those hired needing affordable housing, where would these local workers live?
6. The Summary states that 2.550 Maui residents will be supported by this farming. Based on the information given in 5 how did you arrive at this number of Maui residents supported?
7. The summary mentioned a total of 350 indirect jobs, will these jobs provide a minimum wage and benefits to those in this group and again where will these workers find housing to live with their families?
8. There are many abbreviations which are not identified in the summary.



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Dr. Mary Trotto
Mary.trotto@liu.edu

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Dr. Trotto:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Concerns about the document: Lease of the Water Rights for the Nahiku, Ke‘anae, Honomanu’, and Huelo License Areas. Draft EIS Executive Summary the original complete document of over 2000 pages is too long to be read and responded to prior to the deadline given.*

Response 1: We respectfully disagree with your comment that the Draft EIS is excessively long. The Proposed Action implicates complex substantive issues with long histories. The EMI Aqueduct System has been diverting East Maui stream water for over a century as discussed in Section 1.3.2 of the Draft EIS. A&B's request that the Board of Land and Natural Resources (BLNR) offer a long-term (30-year) water lease at public auction was made on May 14, 2001 and has yet to be acted upon due to a series of regulatory and legal challenges. The proceedings before the Commission on Water Resource Management (CWRM) started in 2001 and only concluded in June 2018. In May 2001, Native Hawaiian Legal Corporation (NHLC) filed 27 petitions to amend the interim instream flow standards (IIFS) for numerous streams within the License Area on behalf of Nā Moku ‘Aupuni ‘O Ko‘olau Hui (Nā Moku), Beatrice Kepani Kekahuna, Marjorie Walleit, and Elizabeth Lehua Lapenia (IIFS petitions). The IIFS proceedings concluded 17 years later, in June 2018, with CWRM's issuance of its Findings of

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Fact, Conclusion of Law and Decision and Order in CCH-MA13-01 (CWRM D&O). The Draft EIS addresses this historical perspective, as required under HAR § 11-200-17.

We also note that the actual text of the Draft EIS is approximately 560 pages, which includes numerous graphics, and there are a total of thirteen appendices, nine of which were completed by technical consultants. We also note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). The Applicant made every reasonable effort to convey information through the Draft EIS in a manner that is accurate, thorough, and appropriately concise in order to provide the public with an opportunity to fairly analyze the potential impacts of the Proposed Action.

Regarding your comment about the deadline given, please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 2: *Considering the recent questions about the raise in water levels, increased global warming and the accelerated timetable for these two environmental concerns, it does not seem prudent at this time to grant a 30 year lease to Maui County water rights. Important issues concerning the use of our ground water and drinkable water may arise in the next few years which could change the premise that most of this document is based upon.*

Response 2: We acknowledge your comments. Climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural

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Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown in the pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

With regards to groundwater, according to the 2019 USGS publication titled, "Estimated Groundwater Recharge from a Water-Budget Model Incorporating Selected Climate Projections, Island of Maui, Hawai'i" states that between 2015 and 2035, it is expected that the demand for potable water from the County of Maui County Department of Water Supply (MDWS) will increase 45% from 33.5 million gallons per day (mgd) to 48.5 mgd. However, the report does not go into the breakdown of aquifer use and future demand and what aquifers will be the most affected by the projected increase in demand. The USGS report only identifies certain aquifer sectors and aquifer systems that will experience either increases or decreases due to climate projections. In the scenarios presented in the USGS report, the aquifer systems in the Ko'olau Aquifer Sector are projected to see some of the largest increases in recharge, whereas aquifer systems in the Central Aquifer Sector are projected to see decreases in recharge due to changes in rainfall patterns from future climate change trends. However, please note that under the Proposed Action, surface water is diverted from the East Maui License Area (which lies largely over the Ke'anae, Waikamoi and Honopou aquifers in the Ko'olau Aquifer Sector (See EIS Figure 4-17), to the Central Maui agricultural fields, which largely lie over the Pā'ia Aquifer in the Central Aquifer Sector (See EIS Figure 4-18). As detailed in Section 4.2.2 of the EIS, the groundwater pumpage within the Ko'olau Aquifer Sector is far below the Sustainable Yield (SY). This section of the EIS also addresses the anticipated impacts to the Central Aquifer Sector from the conveyance of East Maui surface water to Central Maui for irrigation purposes. Section 4.2.2 of the EIS has been updated to reflect your comment regarding the USGS report, as shown in page 4-71 for East Maui and page 4-76 for Central Maui.

Comment 3: *You speak in the document of these water rights going to auction, yet the entire document refers to Mahi Pono, have they already won the auction for these water rights?*

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Response 3: Please note that the Water Lease has not been issued nor has it gone forward to public auction. The EIS was prepared to support the application for the issuance of a long-term Water Lease for the purpose of developing, diverting, transporting and use of the State's East Maui waters through the EMI Aqueduct System for the uses described in the EIS. The EIS also contemplates the environmental effects of variations on the Proposed Action, including scenarios where the amount of water permitted for the Water Lease is insufficient to supply Central Maui and Upcountry Maui. Thus, the EIS analyzes proposed uses of the water, but is not necessarily tied to a specific applicant although Section 1.3.3 of the Draft EIS explains how A&B, on May 14, 2001, requested that the State offer at public auction a long-term water lease under HRS § 171-58 for the, "*right, privilege, and authority to enter and go upon*" the License Area for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. Hence, any party who intends to use the water in a manner consistent with the EIS analysis could, presumably, use the EIS to support a bid on the Water Lease at public auction.

Comment 4: *The document talks about Mahi Pono (the assumed auction winner) will guide their farm plan by BMP- the document mentions non gmo crops and growing food for local consumption. It does not mention, planting draught tolerant, low water requirement crops. It does not mention planting trees as a windbreak to reduce soil temperature and soil drying effect.*

Response 4: The EIS explains that at full operation (which is anticipated by 2030), the Mahi Pono farm plan will utilize approximately 30,000 acres in Central Maui. Section 2.1.4 of the Draft EIS state:

- *That total amount of water will be delivered to approximately 30,000 acres. Of those 30,000 acres:*
 - *Approximately 15,950 acres would be used for farming, including 12,850 acres for orchard crops and 3,100 acres for other crops.*
 - *Approximately 13,800 acres would be used for pasture, of which about 4,700 acres would be irrigated.*
 - *Approximately 250 acres would be used for green energy, such as a solar farm.*

Because there is insufficient surface water to support the entire farm plan, brackish groundwater will also be used. . .

This farm plan would consist of the following:

- *Approximately 20,650 acres of irrigated farm land, including 12,850 of orchard crops, 600 acres of tropical fruit, 1,200 acres of row and annual crops, in addition to a community garden and limited non-GMO energy crops.*

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- *Approximately 13,800 acres of cattle pasture, comprised of 4,700 acres of irrigated pasture, and 9,100 acres of unirrigated pasture. This should fit the proposed model of grass-finishing on irrigated pasture. The unirrigated acreage is less than 10,000 acres, which helps ensure that the entire area devoted to unirrigated pasture will remain productive.*

However, please note that Table 2-1 of the Draft EIS (Table 2-2 of the Final EIS) that was incorporated into Section 2.1.4 has been updated with more precise water usage numbers as shown in page 2-29.

With regards to best management practices, the Mahi Pono farm team, as well as its lessees, follow Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in the use of chemicals, and controlling dust and erosion and runoff associated with their farming activities. As it relates to agricultural chemicals for diversified agriculture, usage would be in strict compliance with federal regulations and Mahi Pono will exercise due care to prevent the release of fuels, lubricants and other hazardous materials. Mahi Pono intends to use a limited amount of fertilizers and pesticides in accordance with all laws and regulations and only on an as-needed basis. In addition, as mentioned above, since January 2020, Mahi Pono has also committed to foregoing the use of Round-Up and other glyphosate-based products within the Central Maui agricultural fields.

As Mahi Pono incrementally increases the amount of farmed acreage over time and crops are planted (particularly the permanent orchard crops), ground disturbance will be again be limited, as appropriate and consistent with farming BMPs. Towards this end, as noted in Response #2 above, Mahi Pono has implemented several water saving strategies for the Central Maui agricultural fields and continues to evaluate additional methods, some of which are consistent with the specific measures you recited. Mahi Pono water saving strategies include the following:

- Planting windbreaks in the fields.
- Incorporating significant uses of weed mat along plant lines, which will reduce evapotranspiration and erosion.
- Mowing rather than plowing inter-rows to preserve organic matter and keep cover to prevent soil erosion.
- Operating within the terms of a Conservation Plan from NRCS, which includes swales and diversions for erosion protection,
- Practicing rotational grazing of livestock.
- Planting permanent tree crops that will develop canopies that will assist with soil moisture retention and reduce evapotranspiration.

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With regard to your comment about draught tolerant crops, please note that many can be grown in Hawai'i, but relatively few can be grown at a scale and cost that compete with low-cost volume producers on the mainland, Mexico and elsewhere. For many crops, the Hawai'i market is too small for economies of scale, and shipping costs and delivery times are a disadvantage for exports. The Mahi Pono farm plan includes those crops judged to be the most promising for commercial success, but excluding GMO crops. Also, water requirements for these crops are typical for Hawai'i. However, the crops requiring high-volumes of water, such as kalo, will not be grown in Central Maui. Please note that Mahi Pono's farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e. orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community.

Comment 5: *Mahi Pono is an organization which has no track record here on Maui for farming on a tropical Island. Again it is not prudent to provide a company like Mahi Pono (the assumed auction winner) a 30 year lease, when there is no information concerning how effective the company will be in the farming business. Central Maui farmlands are in a high wind, low rainfall, draught labeled area. Crops grown in this area, unlike sugar cane, would require a total different planting and watering protocol. This is not evident in the executive summary.*

Response 5: It is acknowledged that Mahi Pono is new entity that has just been recently formed with the goal of operating a large diversified agriculture farm in Hawai'i. However, in its first 18 months of existence, Mahi Pono has hired over 200 120 workers from Maui, most of whom have farm experience on the island. In addition, Mahi Pono's management also has significant experience cultivating diverse crops on more than 100,000 acres on the continental U.S. Also, the company has established market channels, and substantial financial resources." Moreover, Mahi Pono has been successfully expanding their agricultural operations in Central Maui since they purchased the former sugarcane land.

Please note that The Mahi Pono farm plan is discussed not only in the Executive Summary, but in detail in Section 2.1.4. and Section 4.7.4, as well as Appendix I (Subsection 8.a (pp. 34 to 36) of the PEP Report, with details provided in Table 2, Section 2.a (p. T-2)). Water requirements for 2030 are discussed in Subsection 9.a (pp. 39 and 40) of Appendix I, with details provided in Table 3, Section 3.a (p. T-4) of Appendix I. This table includes average daily per-acre water requirements by crop. Production figures are discussed in Subsection 10.a (pp. 42 to 45), with details provided in Table 4, Section 4.a (p. T-7) of Appendix I.

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To the extent economically feasible, Mahi Pono will grow food crops for the Hawai'i market, thereby reducing food imports. At full development of their farm plan, local sales by Mahi Pono and its farm tenants are expected comprise 65% of total sales, with exports at 35%. Local sales are preferred over exports because it increases the food sustainability of the State while also saving on overseas shipping costs. Both local sales and exports are beneficial to Hawai'i: local sales that displace imports reduce the financial drain on the State as a whole, while exports generate income for the State.

The farm plan will evolve over time based on a number of factors, including the available supply of surface water, experience which will be gained on crops that grow well in Central Maui, crops that are profitable, the size of the market for profitable crops, etc.

Regarding your comment questioning the viability of farming in the Central Maui fields owned by Mahi Pono, as summarized in Section 4.7.4 of the Draft EIS and Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts):

Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

The basis for this finding is given in Subsection 5 of Appendix I of the Draft EIS, along with Figures 4 to 12 in Appendix I of the Draft EIS.

Moreover, as discussed in Section 5 of Appendix I and Section 4.7.4 of the Draft EIS, the overwhelming majority of the Central Maui agricultural fields (approximately 80%) are rated by the UH Land Study Bureau (LSB) as having the highest Overall Productivity Rating of "A" (on a scale of "A" to "E" with "E" being the lowest soil rating), and a little over 11% has a "B" rating. In other words, about 27,567 acres (90.9%) are high-quality lands rated A or B. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Classification System, developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), and the College of Tropical Agriculture, University of Hawai'i. Approximately 25,669 acres of the Central Maui agricultural fields are classified under the ALISH system as "Prime", which means "agricultural land which is land that is best suited for the production of crops because of its ability to sustain high yields with relatively little input and with the least damage to the environment." Also, as discussed in Section 5.1.4 of the EIS and Section 5 of Appendix I, approximately 22,000 of the 30,000 acres of

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agricultural fields in Central Maui are designated as Important Agricultural Lands (IAL). Under Article XI, Section 3, of the Constitution of Hawai‘i, the State is required to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. HRS Chapter, 205, § 205-41 through § 205-52, provides for the designation of IAL. As stated in HRS Chapter 205: “*The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations.*” IAL designation facilitates the long-term dedication of lands for future agricultural use so long as there is a sufficient supply of water to allow for profitable farming.

However, the EIS and the associated technical studies do not claim that only Central Maui has the substantial potential to grow useful food crops for Maui’s future. As discussed in Section 2.1 of the Draft EIS, the scope of this EIS is to assess the Proposed Action which is, “*...to enable the Board of Land and Natural Resources (BLNR)-awarded lessee the right, privilege and authority to enter and go upon State-owned lands for the purposes of developing, diverting, transporting and using government-owned waters. The requested Water Lease would allow the use of government-owned waters from the License Area (approximately 33,000 acres which includes lands within Nāhiku, Ke‘anae, Honomanū, and Huelo) through the East Maui Irrigation Company, LLC (EMI) Aqueduct System. Use of that surface water would allow the continued provision of water to enable approximately 30,000 acres of farmland in Central Maui to remain in agriculture.*” Hence, the EIS assesses the action of obtaining a Water Lease and diverting water from East Maui. With regards to agriculture, under the Proposed Action, a major portion of the diverted water from East Maui would be used to irrigate the agricultural fields in Central Maui to continue to transition to diversified agriculture.

Comment 6: *The summary indicates that Maui Pono will create some 790 jobs, considering that Maui currently has less than 1% unemployment, where will this increase workforce come from. If the farming company plans to bring workers into Maui, they should be aware that Maui is in a housing crisis. There are estimated to be a 1500 unit deficit in affordable housing on Maui currently. If the farming company plans to create 790 jobs, and many of these jobs will be filled by off island non residents, where will they live? Assuming the pay roll for these jobs would require the bulk of those hired needing affordable housing, where would these local workers live?*

Response 6: At full operations of the Mahi Pono Farm Plan, currently estimated to occur around 2030, an estimated 790 farming and crop-processing jobs will be provided in Central Maui

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(direct jobs) (about 160 more jobs than provided by HC&S sugar operations in 2006). As explained in Section 4.7.4 of the Draft EIS:

The increase in employment would be gradual, with most jobs filled by former sugarcane workers, skilled workers from Maui and other islands, recent graduates of agricultural-schools and colleges, and unskilled workers who would receive on-the-job training.

Approximately an additional about 230 indirect jobs on Maui will be generated by the purchase of goods and services, for a total exceeding 1,000 new jobs on Maui (PEP Report, Table 5). Hiring workers will be spread out over a number of years as fields are planted, orchards mature, processing facilities are built, etc. Assuming 10 years to reach full operations, direct employment on Maui will increase by an average of about 80 jobs per year, while total direct and indirect jobs will increase by an average of about 100 jobs per year. The latter figure is less than 8% of the 1,270 annual job increase projected for the years 2020 to 2030 by the State for the County of Maui (DBEDT, "Population and Economic Projections for the State of Hawai'i to 2045, June 2018).

Based on past hirings, nearly all future employees are expected to come from Maui. Also, at this time, attracting workers should be easier than in the recent past because of the long-term adverse economic effects of COVID-19 on tourism and Maui's economy. It may take years to rebuild the economy, and the Mahi Pono Farm plan will contribute significantly to this rebuilding.

Since most farm workers are expected to come from Maui, few homes will be required for workers new to the island. In any case, Mahi Pono will pay wages and provide benefits sufficient to attract and retain workers. Under the circumstances, these wages should be sufficient for workers to obtain housing.

COVID-19 could cause a change in Maui's housing market, including a weaker demand for homes during the economic recovery, an increased supply of available homes, and more affordable homes. With a weaker economy, there will be fewer residents moving to Maui seeking jobs and housing. Some residents will leave the island to find jobs elsewhere. Because of fewer visitors, some owners of resort condominiums will rent their units to residents instead of visitors. Under these economic circumstances, home prices and rents may decline.

Comment 7: *The Summary states that 2,550 Maui residents will be supported by this farming. Based on the information given in 5 how did you arrive at this number of Maui residents supported?*

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Response 7: At full operations, the direct plus indirect jobs provided by farming activity in Central Maui is projected to support about 2,550 residents Statewide, of which about 2,290 of them would be on Maui. The calculations—which are based on county residents-to-jobs ratios—are shown in Appendix I, Table 5. (Section 5.a., p. T-11.)

Comment 8: *The summary mentioned a total of 350 indirect jobs, will these jobs provide a minimum wage and benefits to those in this group and again where will these workers find housing to live with their families?*

Response 8: At full operations, the indirect jobs provided by farming activity in Central Maui is projected to be about 350 jobs, with 230 jobs on Maui and 120 jobs on O‘ahu. The annual increase in indirect employment on Maui is expected to be about 23 jobs (230 jobs ÷ 10-year development period).

These jobs will be distributed throughout the economy and will range from unskilled to highly skilled jobs. For Maui workers, their average pay is expected to be similar that for the island.

As is the case with the direct jobs on Maui, most of the indirect jobs are expected to be filled by workers from Maui, although a small number of them could be new to the island. Given this small number and their expected pay, the housing market should be able to accommodate them.

Comment 9: *There are many abbreviations which are not identified in the summary.*

Response 9: Please note that the acronym is also provided in the "List of Acronyms Used" that follows the Table of Contents in both the Draft EIS and the Final EIS and has been updated to include any missed acronyms.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC’s website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Matt McDonald <mattmcdon@gmail.com>
Sent: Tuesday, November 5, 2019 9:44 AM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Public Comments/questions on Maui Water DEIS

Hi,

I am a concerned east Maui resident with large questions outstanding about management about east maui streams:

- 1) How did you go about investigating the impacts of stream diversions on east Maui communities and their cultural practices, especially Huelo, Keanae, and Nahiku? Why did you conclude there would be no impacts to these areas cultural practices, habitat, and social welfare, when in fact these communities are deeply affected by stream diversions? Did you have community meetings in these places and if not, why? How will you plan on accurately representing the true community impact of your diversions in the final EIS?
- 2) If, after your diversions begin, there is evidence of East Maui communities being harmed by said diversions, what recourse do we have under the Public Trust Doctrine?
- 3) How do you plan to accurately report the amount of water you are taking from East Maui, and be accountable to projections needed for farming in central Maui? How do you plan to use accurate reporting technology to give real and believable usage numbers to the water council (unlike A&B)? Accountability was a major problem under A&B's management of the water supply, and I believe real time, or near real time reporting, of water usage should be a prerequisite to beginning diversions. It's the 21st century... this technology should not be hard to implement.
- 4) If your usage of public water resources is found to be overwhelmingly not beneficial to the public of Maui, I.e. you violate the Public Trust Doctrine, what is the process for returning the rights of the water back to the people/state of Hawai'i?

I look forward to hearing answers to my concerns.

Best,
Matt McDonald



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Mr. Matthew McDonald
mattmcdon@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. McDonald:

Thank you for comments dated November 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns, which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am a concerned east Maui resident with large questions outstanding about management about east maui streams:*

How did you go about investigating the impacts of stream diversions on east Maui communities and their cultural practices, especially Huelo, Keanae, and Nahiku? Why did you conclude there would be no impacts to these areas cultural practices, habitat, and social welfare, when in fact these communities are deeply affected by stream diversions? Did you have community meetings in these places and if not, why? How will you plan on accurately representing the true community impact of your diversions in the final EIS?

Response 1: Please note that stream diversion impacts on native stream habitats and aquatic species were investigate by Trutta Environmental Solutions included in the EIS as Appendix A using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model which is summarized in Section 4.2.1 of the Draft EIS. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the

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number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown in pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text in pages 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See pages 4-61 to 4-62 of the Final EIS. Moreover, it should be noted that many cultural resources, including but not limited to 'o'opu, hīhīwai, and 'opae were included in this model.

As it relates to cultural impacts, please note that the EIS did not conclude that there would be no impacts. Rather, the CIA acknowledges that the Proposed Action may impact Native Hawaiian cultural resources and practices and provides for several recommendations to mitigate those impacts. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graiosa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include:

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Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6 pages 4-239 to 4-252. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

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The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

The socio-economic impacts of the Proposed Action are addressed at length in Section 4.7 of the Draft EIS, and in further detail in Appendices G through I (Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report). Draft EIS

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Section 4.7 has subsections addressing impacts to populations and impacts (Section 4.7.1), impacts to social characteristics (Section 4.7.2), impacts to the economy and other fiscal considerations (4.7.3), and impacts to the agricultural economy. (4.7.4). The potential socio-economic impacts of the alternatives to the Proposed Action considered by the Draft EIS are analyzed in Section 3.4.11 (Social Characteristics), 3.4.12 (Economic and Fiscal Resources), and 3.4.13 (Agricultural and Related Economic Resources). The Draft EIS thoroughly addressed cumulative socio-economic impacts in Section 4.17. That discussion has been further supplemented by updates in the Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report as shown in pages 4-331 to 4-336.

Regarding your comment about community meetings, following publication of the EISPN for the Proposed Action, two voluntary public scoping meetings were held to notify and initiate consultation with the community for the preparation of a Chapter 343, HRS, EIS. This process is discussed in Chapter 9. The purpose of this outreach process was to inform and obtain input from the community on relevant issues or concerns that should be considered in the preparation of the EIS documentation for the Proposed Action. Moreover, Earthplan, in conjunction with the Social Impact Assessment conducted several focus group meetings as summarized in Section 4.7.2 and Appendix G of the EIS.

We also note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). The Applicant made every reasonable effort to convey information through the Draft EIS in a manner that is accurate, thorough, and appropriately concise in order to provide the public with an opportunity to fairly analyze the potential impacts of the Proposed Action.

Comment 2: *If, after your diversions begin, there is evidence of East Maui communities being harmed by said diversions, what recourse do we have under the Public Trust Doctrine?*

Response 2: Your comments are unclear. As noted in Response #1 above, the socio-economic impacts of the Proposed Action are addressed at length in Section 4.7 of the Draft EIS, and in further detail in Appendices G through I (Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report). Draft EIS Section 4.7 has subsections addressing impacts to populations and impacts (Section 4.7.1), impacts to social characteristics (Section 4.7.2), impacts to the economy and other fiscal considerations (4.7.3), and impacts to the agricultural economy. (4.7.4). The potential socio-economic impacts of the alternatives to the Proposed Action considered by the Draft EIS are analyzed in Section 3.4.11 (Social Characteristics), 3.4.12 (Economic and Fiscal Resources), and 3.4.13 (Agricultural and Related Economic Resources). The Draft EIS thoroughly addressed cumulative socio-economic impacts in Section 4.17. That discussion has been further supplemented by updates in the Social

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Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report as shown in pages 4-331 to 4-336.

With regards to the Public Trust Doctrine, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

Comment 3: *How do you plan to accurately report the amount of water you are taking from East Maui, and be accountable to projections needed for farming in central Maui?*

Response 3: Please note that reports submitted to State agencies are considered public records that may be requested pursuant to the Uniform Information Practices Act, HRS Chapter 92F. Reporting to State agencies is required under the water Revocable Permits and under the CWRM D&O, and similar reporting requirements may be required under the Water Lease. As discussed in Sections 2.1.4, 4.2.1, and 4.6 of the Final EIS, the CWRM D&O requires EMI to report on changes in stream diversions and ditch settings as irrigation requirements increase. EMI also maintains a system of optical encoders with float tape and data loggers within the EMI Aqueduct System. The information obtained is reported to CWRM on a monthly basis.

Comment 4: *How do you plan to use accurate reporting technology to give real and believable usage numbers to the water council (unlike A&B)? Accountability was a major problem under A&B's management of the water supply, and I believe real time, or near real time reporting, of water usage should be a prerequisite to beginning diversions. It's the 21st century... this technology should not be hard to implement.*

Response 4: EMI has gauges located in several locations across the License Area. These gauges measure the flow in the ditches only. It is not feasible to measure flow in the streams, as there are limited areas that contain the necessary control points to accurately measure streamflow. Similarly, it is not feasible to provide total diversion amounts by a particular portion of the proposed License Area, i.e. diversions amounts only from Huelo, diversion amounts only from Nahiku, etc. The USGS used to have gauges at each of the License Area boundaries. Those gauges were not on individual streams, they were in the ditches at each license area boundary.

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However, due to USGS cost cutting, several of those gauges were removed. It is not feasible to measure the amount of water diverted on a stream by stream, or stream section by stream section, basis. Prior efforts by the CWRM to measure water diversions involved the installation of water gauges in certain streams, which proved entirely impractical due to the flashy nature of the streams, which caused gages to wash away. EMI has never conducted stream gauging as that lays within the expertise the CWRM and the USGS. As noted in the CWRM D&O, the measurements EMI take are at Honopou Stream and Maliko Gulch, however, for the purpose of measuring the aggregate flow from entire License Area, the Honopou Stream measurement reading was used.

Moreover, the work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

With regards to your comment about technology it should be noted Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown in page 2-25.

Comment 5: *If your usage of public water resources is found to be overwhelmingly not beneficial to the public of Maui, I.e. you violate the Public Trust Doctrine, what is the process for returning the rights of the water back to the people/state of Hawai'i?*

Response 5: Please note that this is a speculative comment and outside the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'ānae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the

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potential Water Lease are included through Chapter 4 of the EIS. However, we assume that a similar process to the 2018 CWRM D&O would need to commence.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Mavis Oliveira-Medeiros <mavisoliveira@gmail.com>
Sent: Thursday, November 7, 2019 11:50 PM
To: lan.c.hirokawa@hawaii.gov; Public Comment
Subject: Fwd: comment on water lease D-EIS
Attachments: Mavis waterleaseeis.docx

Attached are my comments regarding your Draft EIS. East Maui would like an extension on the time period due to book/s being 2700 plus Pages & not enough time to read it all & give a good response.

Please see below.

Mavis

(808)866-7409

November 7, 2019

Mr. Ian Hirokawa
Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813
Also via email: ian.c.hirokawa@hawaii.gov

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 South Beretania St., Suite 400
Honolulu, HI 96826
Also via email: waterleseeis@wilsonokamoto.com

Subject: Comments on the Draft EIS for East Maui Water Lease

Dear Mr. Hirokawa and Mr. Matsukawa,

My name is Mavis Medeiros and I am writing to you regarding the above subject, "comments on the draft eis for East Maui water lease. My family and I have lived in Hana (born and raised) most of our lives. When we were young, our parents taught us to gather food from Makapipi, Waiohue and Kuhiwa. My Dad was an Oliveira and they were born and raised in Nahiku. My Mom was a Hoopai and she was born and raised mostly in Honokalani, but also at Ulaino in Hana. Being that both of them were from Koolau Moku, you can understand why we would go to those places for fresh opae, hihwai and fish for o'opu and other pole fishing food from the ocean at Waiohue and Ulaino. You can imagine how distraught my Mom and Dad were when we'd go to their favorite gathering places (late 60's, early 70's) and there was no water or so little, there wasn't enough to feed the whole family and Tutu's too. We had 10 mouths to feed back then. Hana has suffered greatly from A & B and EMI's blatant abuse diverting our water across horizontal paths to get it to "the other side" and not necessarily because people needed water. It was to feed a water hungry crop called sugar cane and also so A&B could satisfy their water needs for development, because A&B quickly became perhaps the largest Developer on Maui. Sugar cane didn't make a whole lot of money and in the recent years before closing, actually lost millions. So truly, what was the water for? Even after closing down for several years, A&B wouldn't give up the water. Why?

Today, Mahi Pono, via A&B is claiming to need the water for the lands they bought from A&B, some 30-40,000 acres depending what article you're reading. Mahi Pono does not have a large need for water yet and can use what water is available to them. We know A&B has wells with over 125,000,000 gallons of water available. Too salty you say, then desalinate it. That would probably be cheaper than repairing the diversions and tunnels in East Maui. Besides that, Mahi Pono said early on when they first came that they had sufficient water for their farmlands and don't need any more from East Maui and was prepared to decommission the diversions. Please explain why all of a sudden Mahi Pono needs water from us. I say us because we are the public and we have a right to the water. Why the sudden change? We are also aware that A&B is promised \$62,000,000., if they can keep the water diversions for future use. Very confusing, to say the least, or not. There is definitely a huge motive if that is the case.

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Please also address my following concerns taken out of the D-Eis book. I hope you understand that most of us did not have enough time to read the whole 2,700 plus page booklet and we need more time to correctly address the draft eis and ask that you extend the time for “comment period.” The 3 (three) books just arrived in Hana a few weeks ago. My comments are mostly or all about East Maui area/waters.

- 2.1 Proposed Action – Understood the streams that were restored will still be restored, but we are concerned about the overage and about other streams not currently being diverted. What are your plans for that?
I also didn’t see a watershed plan as mentioned in 2.1. What is the plan?
- 2.1.1 Department of Hawaiian Home Lands – Did you know that Hana and Keanae are planning on opening up their DHHL lands soon? What are your plans for that? Hana and Keanae have many young families needing housing and have moved away or live with their Parents or Grandparents, along with their Parents and kids.
- 3 – 3.4 Just convenience words to be able to say we considered other alternatives, but it won’t work. Why won’t other sources of water work? We hear that A&B has millions of gallons stored away, use it. Dams should be removed and if still awarded, downscaled to a minimum. The water in the pictures from book 2 clearly illustrate that the water in those dams are stagnant, showing that holding it back is not helping the river, its food supply and the seafood where the river enters the ocean.
- 3.4.5 Coastal Waters – Hana is living proof that since the 10 streams were released, more fish has been available to eat. Where there used to be only a few times a year when the community have been able to enjoy “hukilau” catching and taking off akule from the nets, feeding families abundantly. The past couple years, there has been many “hukilau” and families are able to take home 10-15 fish per person helping remove the fish from the nets. You can ask most lineal descendants this question. How did you do your studies that the returning waters has done more harm than good?
- 3.4.11 Social Characteristics – Which residents exactly said (because it sounds like the whole East Maui did) said they were concerned about the physical condition of the EMI Aqueduct system & hope that Mahi Pono’s ownership would lead to improved stewardship of the system? Most people I know have heard Mahi Pono’s wishes to decommission the system.
- 3.4.12 & 3.4.13 – What is meant by No significant differences to the economic and fiscal impacts are expected within East Maui? And No significant differences to the agricultural activities and related economic benefits are expected within East Maui? There are many acreages available to grow kalo or leko. The water should be diverted to Hana where the weather is more suitable for farming and not too much water is needed and can return to the ocean, as nature planned.
- 3.4.14 Recreational Resources – If the license area were reduced to make more of the State land open to the public that could potentially have a beneficial impact on the availability of recreational resources in East Maui. Are you serious? How would that be beneficial exactly? We have the worst record of native/endemic plants, birds disappearing and more invasive plants in recent years than ever. How did you come up with such an assinine statement?
- 3.4.15 Visual Resources – Every single time we pass one of the dry or mostly dry (trickle) streams, us Kanaka Maoli feel like crying because it’s not normal. How can you say the proposed action are not expected to have significant impact on the visual resources in the

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Okamoto – page 3

License area? Just the sight of no water and invasive trees and plants growing in them hurts. Every single time we drive past it, deep in our na'au because it's not normal. That plus the fact that we know that the wai food and kai food are not being fed, therefore not feeding the people. What makes you feel like this will not impact us?

- 4. State owned land are crown lands that was given to his people by Kamehameha or kept for his families. The water is not to be taken and the public ignored. WE should come first. The water is for the public, not a corporation to make money?
- 4.6 – Cultural Resource and Practices: If you had truly searched the Archives, Museums, UH Manoa, the mahele database and OHA, then you know many of the water rights were deeded to Hawaiians from the Great Mahele of King Kamehameha III. What did you find when you did your research re water rights? There is also no mention of the impacts this has to Hana. It has a very significant impact on Hana people too. Who did you find that King Kamehameha III gave the water rights in Koolau to?
- 4.7.4 – Agricultural Economy: Shows no impacts. I think that future impacts to East Maui should also be calculated. Many more of the young generation are beginning to farm and enjoy taro farming, even Hana students and adults are beginning to plant kalo. How can you ask for a 30 year lease showing no impacts to the future of Hana or Keanae/Wailua? Young college grads are returning and realizing that “sustainability is the way to go.” Water is necessary for that to happen.
- 4.10 – Impacts and Mitigation Measures: If the current owner of the EMI diversions, ditches and tunnels (A&B) are anything like the past owners of the diversions, ditches and tunnels (A&B), the record of maintenance on the current and past system is very inadequate. Much water leaks out of the ditches & tunnels and the state of disrepair is embarrassing. How can you say you will maintain and repair the system? We drive past it almost every week or two and can see with our own eyes the state of disrepair it's in. A serious plan for this would be necessary, but only with a 5 year lease, if at all.
- 4.12 – Hazardous Materials: Hazardous/toxic waste is defined as based on their ignitability, corrosiveness, reactivity and toxicity. The potential impacts hazardous materials and waste have on human health and the environment are largely dependent upon their types, quantities, toxicities and management practices.

East Maui – EMI Personnel use federally regulated herbicides to maintain the trails and access roads used for the maintenance of the EMI Aqueduct system. The proposed system will maintain existing maintenance protocols. No significant impacts on or from hazardous materials in the region are anticipated as the proposed action does not involve any of the use of hazardous materials, except for the continued use of herbicides in compliance with state and federal regulations in connection with the continued maintenance of the EMI Aqueduct system.

It is common knowledge that round up is/was the choice herbicide used by EMI in the past. If you have been paying any attention, Monsanto and other Big Ag Corporations are being sued by thousands of people who have suffered or knows someone who's suffered with cancer especially, but other diseases like asthma, allergies and eczema are other diseases caused by this one herbicide/pesticide. Saying that it's FDA or EPA approved doesn't help the many men who have worked and died working for EMI. No warnings were given of its potential danger. This is still being sprayed today. In the past recent months, twice I have taken pictures of the areas around

*East Maui Water lease
Okamoto – Page 4*

the streams and going up the EMI roads to the upper regions of diversions/dams, etc. I will try and include them with this letter/email, but if my phone doesn't allow it, I will send it tomorrow. Please explain how you will protect future employees from the hazardous use of round up or any chemicals that are dangerous to humans. Also, can you provide a report of how many men have passed after many years of using these chemicals could help any future or current employees know how dangerous working these fields are or can be working for EMI. We were personal friends with at least two of the young men who passed away from cancer after working for EMI for many years, but hear there were more.

We are not against farming to feed Maui nui, other islands then exporting away from there on out. We are against the horrible history of A&B & EMI and the damage done to East Maui. There is no reason why water should be diverted when there is no true farm plan, no plan to keep the food here and hardly any plants in the ground. We should never agree to a lease for 30 years either. We hope you take this letter into consideration and do some serious homework before even reapplying or making the final EIS.

Sincerely,

Mavis I. Medeiros,
Lineal Descendant, East Maui



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Ms. Mavis Oliveira-Medeiros
mavisoliveira@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Oliveira-Medeiros:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *East Maui would like an extention on the time period due to book/s being 2700 plus Pages & not enough time to read it all & give a good response.*

Response 1: Please note that there is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comments were received during the statutory comment period.

Comment 2: *My name is Mavis Medeiros and I am writing to you regarding the above subject, “comments on the draft eis for East Maui water lease. My family and I have lived in Hana (born and raised) most of our lives. When we were young, our parents taught us to gather food from Makapipi, Waiohue and Kuhiwa. My Dad was an Oliveira and they were born and raised in Nahiku. My Mom was a Hoopai and she was born and raised mostly in Honokalani, but also at Ulaino in Hana. Being that both of them were from Koolau Moku, you can understand why we would go to those places for fresh opae, hihiwai and fish for o’opu and other pole fishing food from the ocean at Waiohue and Ulaino.*

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You can imagine how distraught my Mom and Dad were when we'd go to their favorite gathering places (late 60's, early 70's) and there was no water or so little, there wasn't enough to feed the whole family and Tutu's too. We had 10 mouths to feed back then. Hana has suffered greatly from A & B and EMI's blatant abuse diverting our water across horizontal paths to get it to "the other side" and not necessarily because people needed water. It was to feed a water hungry crop called sugar cane and also so A&B could satisfy their water needs for development, because A&B quickly became perhaps the largest Developer on Maui. Sugar cane didn't make a whole lot of money and in the recent years before closing, actually lost millions. So truly, what was the water for? Even after closing down for several years, A&B wouldn't give up the water. Why?

Response 2: Regarding your comment about being taught to gather food from Makapipi, Waiohue, and Kuhiwa streams, please note the following: Under the Commission on Water Resources Management Findings of Fact, Conclusion of Law, and Decision and Order in Case CCH-MA13-01, dated June 20, 2018 (CWRM D&O), both Makapipi stream and Waiohue stream have been ordered for full restoration of flow. In other words, the EMI Aqueduct System will no longer be permitted to divert water from those two streams. As for Kuhiwa stream, this stream has never been diverted by the EMI Aqueduct System because it is located beyond the eastern end of the system. The area of Ulanio is also located much farther east of the EMI Aqueduct System.

Regarding your comment about going to the above aforementioned places to gather opae, hīhīwai, and 'o'opu, please note that Appendix A and Section 4.2.1 of the Draft EIS presented the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model which was used to quantify the impacts of flow restoration on native stream animal habitat including opae, hīhīwai, and 'o'opu. The above aforementioned streams that were once diverted by the EMI Aqueduct System will see an increase in habitat for these stream species as they were ordered to be fully restored.

Your comment about not being able to get food from these streams in the 1960s and 1970s is acknowledged. Although Kuhiwa stream has never been diverted by the EMI Aqueduct System and, therefore, is beyond the scope of this EIS, we acknowledge that CWRM's rationale for ordering full natural flow at Makapipi was based on the desire to allow that stream to support significant kalo cultivation. See CWRM D&O at iv. Whereas, for Waiohue, CWRM ordered a return of full flow as a habitat reference stream. See CWRM D&O at v. Please note that the diversified agricultural plan proposed by Mahi Pono will use far less water than was used by HC&S for sugarcane operations. As discussed in Section 1.3.2 of the Draft EIS, the EMI Aqueduct System diverted water mainly to support the sugarcane operations in Central Maui starting in the late 1800s, through 2016. However, over the course of the past several decades, the users of the EMI Aqueduct System have grown to include non-potable water

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service for agricultural uses at the Kula Agricultural Park (KAP) as well as potable water service through the County of Maui Department of Water Supply (MDWS) to domestic and agricultural users in Upcountry Maui and limited historic uses, including water for pasture, livestock, non-profit irrigation and fire suppression at/around the Pu'unēnē Mill area, including for non-profits and a federal post office, as well as for related uses around the County's Central Maui landfill (quarry, composting, and C&D landfill for purposes such as restrooms, dust control).

As discussed in Section 2.1.2 of the Draft EIS, the long-term average delivery (up until 1986 when the first return of water was made to East Maui streams) by the EMI Aqueduct System was approximately 165 million gallons per day (mgd) (CWRM D&O, FOF 519) before any use of the water by the MDWS or HC&S. The median flow for more recent flow deliveries (between 1987 and 2006) were approximately 135.58 mgd at Honopou Stream and 146.64 mgd at Māliko Gulch. In contrast, the amount of water to be diverted under the Proposed Action is estimated to be 92.32 mgd before any use of water by the MDWS or Mahi Pono, which is considerably less than was diverted during sugarcane farming. Your comment about A&B engaging in development seems misplaced in the context of this EIS. The water that was diverted in the past, and more importantly the water that would be diverted should the Water Lease be issued, would be used for the purposes identified in the EIS and pursuant to the conditions of the Water Lease; not to facilitate real estate development by A&B.

You asked why after closing sugar operations (which at its peak provided over 1,000 jobs to Maui residents), A&B "wouldn't give up the water." Irrigation water from the East Maui streams delivered through the EMI Aqueduct System is key to keeping agricultural lands in Central Maui in agricultural use for the future, which is the desired goal of the Maui community as articulated in its General and Community Plans. As discussed in EIS Section 1.1, water was needed to support sugarcane farming by HC&S through December 2016, at which point HC&S then began pursuing diversified agricultural uses for the former sugarcane fields in Central Maui. However, in December 2018 Mahi Pono acquired those Central Maui agricultural fields with a commitment to use them for diversified agriculture and has since taken action to plant new crops and begin the implementation of its diversified agriculture plan, as discussed in the EIS.

Comment 3: *Today, Mahi Pono, via A&B is claiming to need the water for the lands they bought from A&B, some 30-40,000 acres depending what article you're reading. Mahi Pono does not have a large need for water yet and can use what water is available to them. We know A&B has wells with over 125,000,000 gallons of water available. Too salty you say, then desalinize it. That would probably be cheaper than repairing the diversions and tunnels in East Maui.*

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Response 3: Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System for use in Central and Upcountry Maui. This updated information has been added to Section 2.1.4 of the Final EIS as shown in pages 2-30 and 2-32. Moreover, as of November 2020, Mahi Pono projected that by the end of the calendar year 2021, it could be cultivating the following within Central Maui: (a) 4,920 acres in orchard crops, including lemons, limes, oranges, avocados, coffee, macadamia nuts; (b) 633 acres in row crops; (c) 102 acres in tropical fruits; and (d) 12,000 acres in cattle operations. Based upon the planned estimates, Mahi Pono projected that its total water needs from the East Maui watershed/streams over the course of 2021 would be approximately 32.3 mgd as discussed depicted in Table 2-3 in Section 2.1.4 of the Final EIS and shown in pages 2-30 and 2-32. Hence, the continued use of East Maui surface water is essential for the implementation of the full Mahi Pono farm plan, which, should the Water Lease be issued, is expected to occur in 2030. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Please note that the EIS is clear that the full buildout of the Mahi Pono farm plan covers approximately 30,000 acres of agricultural fields in Central Maui. Under such a scenario, with the Water Lease issued in the amounts authorized under the CWRM D&O, Mahi Pono would irrigate the Central Maui agricultural fields with East Maui surface water and also with some brackish groundwater from Central Maui as described in Section 2.1.4 of the EIS and as shown in Table 2-1 of the Draft EIS which has been revised in the Final EIS as shown on page 2-29 to correct for rounding errors.

Your comment that "A&B has wells with over 125,000,000 gallons of water available" is acknowledged. However you did not identify any source for this information and it is not consistent with any information we have regarding wells that supply the Central Maui agricultural fields. That amount does not match the amount of groundwater available to Mahi Pono from its brackish water wells that supply the Central Maui fields.

As discussed in Section 4.2.2 of the Draft EIS, the agricultural fields within Central Maui are within the MDWS Central Aquifer Sector which includes four aquifer systems: Pā'ia, Kahului, Kama'ole, and Makawao aquifers. The Central Maui agricultural fields overlie the Pā'ia and Kahului aquifers, for which the sustainable yields (SY) are 7 and 1 mgd, respectively. SY calculations, however, do not account for water transfers into an aquifer, either above ground or subterranean, including surface water conveyed to the Central Maui Aquifer Sector from the Ko'olau Aquifer Sector for irrigation by the EMI Aqueduct System. During sugarcane operations, the combined pumping capacity of A&B's 15 brackish water wells was

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approximately 228 mgd of brackish water, but the true instantaneous pumping capacity of the wells – the most that can be pumped over 3 to 5 days – was 115 mgd during sugar cultivation, after which sump levels started to decline. From 1986 to 2013, A&B pumped an average of 71 mgd from the brackish water wells; during the 2008-to-2013 period, these wells delivered about 70 mgd of brackish groundwater to the lower-elevation fields. This was a suitable source of water for sugarcane during droughts because sugarcane can tolerate periodic use of water with higher salinity levels. However, please note that Section 2.1.4 of the Final EIS regarding the description of the brackish groundwater wells that serve the Central Maui Field Irrigation System has been revised to accurately reflect the number of wells that Mahi Pono has access to for the irrigation of its Central Maui agricultural fields, which is 10 wells, as shown on page 2-25. The pumping capacity of the 10 brackish water wells available to Mahi Pono for use to irrigate its Central Maui agricultural lands is 156 mgd of brackish water.

Moreover, with respect to the Mahi Pono farm plan, because of salinity and the salt tolerance of diversified agricultural crops, which are less salt-tolerant than sugarcane, the use of brackish water on the lower fields is assumed to be limited to about 30% of the total water applied. In total, combining the upper and lower fields, the overall water split across all 30,000 acres would be approximately 80% surface water and 20% brackish groundwater water as the upper fields cannot be irrigated with brackish water. If insufficient water is available from the EMI Aqueduct System, then crop farming will have to be reduced no matter how much brackish water was available. Thus, we disagree with your statement that the brackish wells are part of a ‘reliable system’ as its utility and availability are tied to the amount of water available from the East Maui streams via the EMI Aqueduct System. The sustainable yield of the underlying aquifers as well as the quality of water are uncertain in light of the fact that significantly less recharge from imported East Maui surface waters will occur. Historically, the sustainable pumping capacity of these wells was highly dependent on irrigation recharge and the positive benefits to the underlying aquifers.

With respect to your comment encouraging desalinization of the existing Mahi Pono brackish water wells, please note that Chapter 3 of the Final EIS has been updated to include Section 3.1.1.4 which analyzes the option of desalinization and its environmental impacts, as shown on pages 3-14 to 3-19 of the Final EIS. As shown in the discussion in pages 3-14 to 3-19 of the Final EIS, desalinization of the existing Mahi Pono brackish water wells would yield approximately half the amount of brackish water, about 50 mgd. Furthermore, desalinization is not a cheaper option than diverting surface water resources and has other negative environmental impacts such as impacts to regional hydrologic, geologic, and biological resources. Hydrological resources would be assumed to experience the greatest impacts due to withdrawals and injections greatly influencing the regional water sources. Highly in-depth hydrogeological study will need to be done within the area of the proposed injection wells due to the fact that the injection wells must discharge the brine into a confined aquifer/space at least ¼ mile under any drinking water

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aquifers so as not to contaminate any other freshwater sources. Due to the increased restrictions and preventative measures that are required under Class I injection wells (Class I is the type of injection well associated with industrial waste), there would not be a need for a “no-farming zone” since, under construction regulations for a Class I well, extreme preventative measures are required in order to prevent harmful water from infiltrating drinking water sources in the event of a spill/leakage. Additionally, the harmful discharge from the desalination plant will be pumped extremely deep underground, minimizing any effect to surrounding soils. Nevertheless, a buffer area between the injection wells and the agricultural lands would be recommended. Please also note that for operational purposes, the tunnels and diversions of the EMI Aqueduct System are not in need of significant repair as you state.

Comment 4: *Besides that, Mahi Pono said early on when they first came that they had sufficient water for their farmlands and don't need any more from East Maui and was prepared to decommission the diversions. Please explain why all of a sudden Mahi Pono needs water from us. I say us because we are the public and we have a right to the water. Why the sudden change? We are also aware that A&B is promised \$62,000,000., if they can keep the water diversions for future use. Very confusing, to say the least, or not. There is definitely a huge motive if that is the case.*

Response 4: Our understanding is that Mahi Pono has never stated that it had sufficient water for its farmlands without the East Maui water, nor has Mahi Pono stated that it would decommission the diversions in East Maui. As explained in Section 2.1 of the Draft EIS:

The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion...It will also allow the continued provision of water to approximately 30,000 acres of agricultural lands (formerly in sugarcane) in Central Maui.

The Water Lease will allow Mahi Pono to implement its farm plan to full buildout. As mentioned in Response #3, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Regarding your comment that A&B is promised \$62,000,000 if the water diversions are kept for future use, you did not provide a source for your statement, but in any event it is not correct. To

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the contrary, Mahi Pono would receive a \$62,000,000 rebate reflecting a reduction in land value should the land that it purchased from A&B not prove to be agriculturally productive as presumed due to the lack of sufficient water. Without the Water Lease, it is estimated that the maximum amount of surface water that would be available to be collected by the EMI Aqueduct System is approximately 30.76 mgd as stated in Section 3.3 of the Draft EIS versus approximately 92.32 mgd under the Proposed Action.

Comment 5: *Please also address my following concerns taken out of the D-Eis book. I hope you understand that most of us did not have enough time to read the whole 2,700 plus page booklet and we need more time to correctly address the draft eis and ask that you extend the time for "comment period." The 3 (three) books just arrived in Hana a few weeks ago. My comments are mostly or all about East Maui area/waters.*

Response 5: Regarding your comment about the Draft EIS being received by Hāna Public Library after publication, we originally sent one hard copy to the Wailuku Public Library as that is the most centralized location between East Maui, Upcountry Maui, and Central Maui. However, at the request of a County councilmember, two more hard copies were sent out; one to the Hāna Public Library and one to Maui County Council Office. Moreover, please note that pursuant to HAR § 11-200-21 a distribution list of reviewers needed to be approved by the State of Hawai'i Office of Environmental Quality Control (OEQC), which notified the reviewers of the availability of the Draft EIS. The distribution list included Federal, State, and County agencies, list of depositories, as well as organizations and individuals (who provided addresses) that participated in the early consultation and EIS Preparation Notice (EISPN) scoping meetings and commented on the EISPN. This list was provided as Table 9-2 in the Draft EIS. Hence, the Draft EIS was distributed in compliance with the required State process.

In response to your comment regarding extending the Draft EIS comment period, please see Response #1 above.

Comment 6: *2.1 Proposed Action – Understood the streams that were restored will still be restored, but we are concerned about the overage and about other streams not currently being diverted. What are your plans for that?*

Response 6: Your comments about "overage" and "other streams not currently being diverted" are unclear. As explained throughout the EIS, the Water Lease under the Proposed Action would be required to comply with the IIFS set for the streams in the License Area, including the IIFS set forth under the CWRM D&O. That includes adhering to the requirements to stop all diversions on the streams ordered for full restoration under the CWRM D&O. As discussed in Section 2.1 of the Draft EIS:

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The CWRM D&O establishes a quantity of water that must remain in each stream at specified locations. The CWRM D&O ordered full stream restoration for 10 streams and partial flow restoration on 12 additional streams (Please refer to Section 1.3.4). Therefore, the maximum amount of water that can be awarded through the Water Lease is what is available for diversion after the CWRM D&O is implemented. This is the premise of the Proposed Action.

Hence, the Proposed Action will need to comply with the IIFS for all streams in the License Area before any surface water diversions can occur. For the streams within the License Area that were not subject to the CWRM D&O, it is assumed that they would continue to be diverted as they were in the past. However, as mentioned in Response #3, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

Comment 7: *I also didn't see a watershed plan as mentioned in 2.1. What is the plan?*

Response 7: As discussed in Section 2.1 of the Draft EIS, Hawai'i Revised Statutes (HRS) § 171-58(e) requires a watershed management plan in connection with a water lease. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the Board of Land and Natural Resources (BLNR) approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses identifying priority outcomes essential to maintain or restore biological integrity of the watershed. The goals of watershed management plans are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Comment 8: *2.1.1 Department of Hawaiian Home Lands – Did you know that Hana and Keanae are planning on opening up their DHHL lands soon? What are your plans for that? Hana and Keanae have many young families needing housing and have moved away or live with their Parents or Grandparents, along with their Parents and kids.*

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Response 8: The Draft EIS acknowledged the Department of Hawaiian Home Lands' (DHHL) plans in Ke'anae and the fact that DHHL has the right to seek a reservation of water. Section 2.1.1 of the Draft EIS states that:

The DHHL has previously secured from the CWRM the following reservations of groundwater:

- 3,000 gpd for Ke'anae-Wailuānui
- 813,000 gpd for Kēōkea-Waiohuli
- 1,734,000 gpd for Pulehunui

Non-potable water needs for the DHHL's lands in Ke'anae-Wailuānui amount to 6,868,000 gpd. Although the DHHL holds a reservation for 3,000 gpd of potable water for this area for development over the next 20 years, another 7,000 gpd of potable water may be required for longer-term development. Thus, a potential reservation for this area amounts to 6,875,000 gpd. Ke'anae is fed by Pi'ina'au and Palauhulu Streams; Wailuānui is fed by Wailuānui and Waiokomilo Streams. These four streams are, or will soon be, fully restored. The proposed Water Lease, therefore, would not be affected by such reservations of water for the DHHL.

DHHL lands in Hāna should not be impacted by the proposed Water Lease as the EMI Aqueduct System does not divert streams in the Hāna area nor is it able to service Hāna. Makapipi Stream marks the furthestmost eastern stream diverted by the EMI Aqueduct System and the furthestmost eastern end of the EMI Aqueduct System.

Specific information regarding the DHHL future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of

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the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown on pages 2-4 to 2-7. As explained in pages 2-4 to 2-7 of the Final EIS, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water by CWRM, CWRM could act on a reservation request related to a proposed lease. As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the DLNR's Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

Section 2.1.1 of the Draft EIS stated, with respect to the DHHL reservation, that "*Until that reservation is physically claimed, however, it will be available for use by the lessee.*" That statement has been clarified in the Final EIS as shown on pages 2-4 to 2-7, as it is uncertain whether the DHHL reservation amount would be available to the lessee until such time as it is needed by DHHL. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

Comment 9: 3 – 3.4 *Just convenience words to be able to say we considered other alternatives, but it won't work. Why won't other sources of water work? We hear that A&B has millions of gallons stored away, use it. Dams should be removed and if still awarded, downscaled to a minimum. The water in the pictures from book 2 clearly illustrate that the water in those dams*

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are stagnant, showing that holding it back is not helping the river, its food supply and the seafood where the river enters the ocean.

Response 9: Regarding alternatives considered in the EIS, HAR § 11-200-17(f) states:

The draft EIS shall describe ...alternatives which could attain the objectives of the proposed action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions...

As discussed in Section 1.2 of the Draft EIS:

In general, the objectives of the issuance of the Proposed Action (Water Lease) are:

- *Preserve and maintain the EMI Aqueduct System, including its access roads*
- *Continue to meet domestic and agricultural water demands in Upcountry Maui*
- *Continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses)*
- *Continue to serve community water demands in Nāhiku*

The Draft EIS in Chapter 3 included a rigorous evaluation of potential alternative sources or methods of acquiring water that could potentially replace or supplement surface waters from East Maui to meet the stated objectives of the Proposed Action. Specifically, Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that had been raised in scoping, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3. Moreover, based on comments received on the Draft EIS, the alternate/supplemental water alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the Final EIS.

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Your comment alleging A&B has "millions of gallons stored away" lacks specificity and is therefore unclear and lacks relevance to the EIS. We assume you are again referring to the amount you referenced in Comment #3 (125,000,000 gallons) and we direct you to Response #3. Furthermore, the Draft EIS considered the Added Storage Alternative as described in Section 3.1.1.3 of the EIS. Please note, however, that while storage allows for the opportunity to supplement water from reservoirs into the ditches during low flow or low rainfall periods, storage is not a replacement water source. See pages 3-11 to 3-14 of the Final EIS.

Regarding your comment recommending the removal or downsizing of dams, most of them have not had water diverted into them since the closure of sugar in 2016. Even historically, the reservoirs are not full for a majority of the year. Furthermore, the reservoirs within the Central Maui agricultural fields are used more to transport and distribute water among the fields and not so much for storage purposes. Accordingly, there will be minimal benefit to the streams from removing or downsizing the dams since only a small amount of water is being routed to the dams at present and historically.

We cannot determine what pictures within "book 2" you are referring to. Volume 2 of the Draft EIS contains technical studies provided as Appendices A through I, and therefore contains numerous figures and photographs. However, in response to your comment about water being stagnant and not helping the river, food supply, or seafood, Section 4.2.1 generally recognizes that the impounding of water can create habitats for mosquito species, as well as negative impacts on native stream species reducing available habitat.

Comment 10: *3.4.5 Coastal Waters – Hana is living proof that since the 10 streams were released, more fish has been available to eat. Where there used to be only a few times a year when the community have been able to enjoy "hukilau" catching and taking off akule from the nets, feeding families abundantly. The past couple years, there has been many "hukilau" and families are able to take home 10-15 fish per person helping remove the fish from the nets. You can ask most lineal descendants this question. How did you do your studies that the returning waters has done more harm than good?*

Response 10: It is not clear what you mean by 10 streams released in Hāna. None of the streams to be diverted under the Proposed Action or historically diverted by the EMI Aqueduct System are within the Hāna region.

Your comment that akule have returned to the Hāna area since some East Maui streams were restored is acknowledged, but a causal relationship is unlikely since, as stated above, none of the restored streams are within the Hāna region. A stream and ocean water chemistry assessment

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was conducted by Sea Engineering, Inc. (SE) and Marine Research Consultants, Inc. (MRC) in 2018 (See Appendix B). The study concluded that the effects of stream water on marine waters is minor in these habitats, due to the physical processes associated with a relatively small input of stream water to the vastly larger ocean environment with continual wave energy and intense mixing. Thus, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species.

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species (‘O‘opu naniha (*Stenogobius hawaiiensis*), ‘O‘opu akupa (*Eleotris sandvicensis*) and ‘Ōpae ‘oeha‘a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi‘ina‘au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa‘akea will have connectivity flow restoration, while ‘O‘opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi‘ina‘au Stream) have esturine reaches, four of which were noted by Trutta’s HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR’s methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

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Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83.

Regarding your comment that the studies concluded that returning waters has done more harm than good, please note that there are no statements within any of the technical studies or the Draft EIS asserting that *“that the returning waters has done more harm than good”*. The collected data presented in EIS Appendix B (East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry) and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

Comment 11: *3.4.11 Social Characteristics – Which residents exactly said (because it sounds like the whole East Maui did) said they were concerned about the physical condition of the EMI Aqueduct system & hope that Mahi Pono's ownership would lead to improved stewardship of the system? Most people I know have heard Mahi Pono's wishes to decommission the system.*

Response 11: The Social Impact Assessment (SIA) provided as EIS Appendix G and summarized in Section 4.7.2 of the Draft EIS, obtained input from several community members, many of whom have direct and long-term experience with the streams in East Maui. As discussed in Section 4 of the SIA, seven focus groups were convened in November 2018. Participants in these sessions included residents, farmers and ranchers, and people who are active in environment and sustainability efforts. These participants lived in Ke'anae, Wailuānui, Huelo, Ha'ikū, Kula, Makawao and Pukalani. Specifically, Section 4.2.4.5 of the SIA included in the Final EIS discusses the community concerns related the EMI Aqueduct System conditions brought up in the November 2018 focus group meetings. Participants noted that the EMI Aqueduct System is in poor condition and loses substantial water, which increases the amount of water needed for agricultural operations. It should be noted, however, that the EMI Aqueduct System is extremely efficient and does not lose water. For clarification, it is within the Central Maui Field Irrigation System that there are some irrigation system losses. Those losses have been

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estimated to be approximately 22.7% during the time of sugar cultivation.

Relating to the physical condition of the EMI Aqueduct System, EMI has established a number of standard operating procedures to address the clean-up of trash and debris within the License Area. Besides recognizing unnecessary debris in the field during routine maintenance tasks, EMI has conducted specific identification and removal operations of debris that has been observed from previous field work. EMI also has in place a practice of removing any equipment and excess materials it brings into the License Area to perform work on the EMI Aqueduct System as soon as the job(s) is completed.

Regarding your comment about decommissioning the system, EMI, the owner of the EMI Aqueduct System, has no intention of decommissioning the EMI Aqueduct System, which serves several important purposes as discussed in EIS Chapter 2. Water delivered through the EMI Aqueduct System will be key to vibrant diversified agriculture in Central Maui and a healthy Upcountry Maui community.

Comment 12: *3.4.12 & 3.4.13 – What is meant by No significant differences to the economic and fiscal impacts are expected within East Maui? And No significant differences to the agricultural activities and related economic benefits are expected within East Maui? There are many acreages available to grow kalo or leko. The water should be diverted to Hana where the weather is more suitable for farming and not too much water is needed and can return to the ocean, as nature planned.*

Response 12: Regarding your question related to the economic and fiscal impacts of East Maui relating to the Proposed Action, the impacts are not considered to be significant as the region is largely rural and there is little to no commercial development within the East Maui communities. Any economic and fiscal impacts are directly tied to taro farming and other agriculture. Please note that the discussion in Section 4.7.3.2 of the Final EIS has been updated as shown on pages 4-277 to 4-279 based on the updated work conducted for Appendix I.

For the analysis presented in Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts (Updated December 2020) of the Final EIS, taro farms in East Maui (from Honopou to Nāhiku), including use of water from streams not subject to the CWRM D&O, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. This acreage is assumed for the Proposed

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Action and all associated alternatives since nearly all potential new taro cultivation is assumed to draw water from fully restored taro streams which will have the same flows under all alternatives. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in pages 4-288 to 4-293. As discussed in Section 4.7.4 of the EIS, at its peak, taro production in Hawai‘i was thought to cover approximately 20,000 acres. By 1900, taro production Hawai‘i decreased to about 1,280 acres, and by 1966, only 400 acres were farmed. As of 2015, land in crops were estimated at about 340 acres. According to the Agricultural Land Use Maps (ALUM), the East Maui communities had about 105.5 gross acres in taro in 1980, including about 96.3 acres in Ke‘anae and Wailua, and 9.3 acres in Hūelo. By 2015, the acreage in taro had fallen to about 34.2 acres in taro, and only about 30 gross acres in taro by the end of 2017.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu‘u, Ka‘aiea, ‘O‘opuola, Puehu, Nāili‘ilihaele, Kailua, Hanahana, Hoalua, Waipi‘o, Mokupapa and Ho‘olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown in pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area where these 12 streams are located: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamo Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe‘e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo‘i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

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Regarding your comment that water should be diverted to Hāna, please note that there is no diversion system in place to transport water from the License Area to Hāna. The ditches within the License Area stop at Makapipi Stream and do not extend to Hāna. Moreover, the Proposed Action does not include developing a new ditch system to deliver water to farms in Hāna as it would not achieve the goals and objectives of the Proposed Action as discussed in Section 1.2 of the EIS and Response #9 above.

Comment 13: *3.4.14 Recreational Resources – If the license area were reduced to make more of the State land open to the public that could potentially have a beneficial impact on the availability of recreational resources in East Maui. Are you serious? How would that be beneficial exactly? We have the worst record of native/endemic plants, birds disappearing and more invasive plants in recent years than ever. How did you come up with such an asinine statement?*

Response 13: We acknowledge that you think it is asinine to allow greater public access into the State-owned License Area. However, the Division of Forestry and Wildlife (DOFAW) of the Department of Land and Natural Resources has advocated for greater public access. A copy of DOFAW's comment letters dated February 20, 2016 and November 6, 2019 are included in Appendices M and N respectively. The proposed License Area as described in the Draft EIS is approximately 33,000 acres within the Ko'olau Forest Reserve and the Hanawā Natural Area Reserve (NAR). A new condition included in the 2020 and 2021 water revocable permits required the removal of the Hanawā NAR from the revocable permit area, and calls for A&B to continue discussions with DOFAW to identify additional forest reserve lands to be removed from the License Area. The Hanawā NAR consists of approximately 7,500 acres and is further discussed in Section 1.3.1 of the Final EIS as shown on page 1-2. It should be noted that no portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the revocable permit area will result in additional public access because the NAR rules restrict public access. However, this may not be true for other areas that DOFAW may want the BLNR to withdraw from the License Area going forward.

Section 3.2.2.2 of the Draft EIS discusses the “Modified Lease Area” alternative that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Moreover, impacts of the Modified Lease Area alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories. In summary, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation

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by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access to areas that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown in pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust general discussion regarding impacts to the areas that would allow for more public access. The comparative analysis is provided in Section 3.4 and Table 3-2 has been added to the Final EIS as shown in pages 3-49 to 3-80.

From a recreational perspective and standpoint, should the License Area allow more public access, this could allow more recreational activities (e.g., hiking, hunting, etc.) to occur within the License Area resulting in a beneficial impact for recreational resources and users. However, your concerns about invasive species and flora and fauna impacts are acknowledged, and similar concerns were presented in the EIS based upon the analysis of the biological consultants who prepared studies for the EIS. As discussed in EIS Section 3.2.2.2 and further in Section 3.4, as shown on pages 3-21 to 3-24, allowing more public access into the License Area, could increase adverse environmental impacts through the introduction and spreading of invasive species and damage to historic resources.

Comment 14: *3.4.15 Visual Resources – Every single time we pass one of the dry or mostly dry (trickle) streams, us Kanaka Maoli feel like crying because it's not normal. How can you say the proposed action are not expected to have significant impact on the visual resources in the License area? Just the sight of no water and invasive trees and plants growing in them hurts. Every single time we drive past it, deep in our na'au because it's not normal. That plus the fact that we know that the wai food and kai food are not being fed, therefore not feeding the people. What makes you feel like this will not impact us?*

Response 14: As discussed throughout the Draft EIS, as well as Section 4.9 relating to Visual Resources, the EIS baseline for assessment must also consider the historical context, where visual impacts will be far less than the impacts than were present during the years of sugarcane

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operations when vastly more water was diverted from East Maui as discussed in Response #2. Specifically, Section 4.9 of the Draft EIS states:

The Proposed Action is limited to the issuance of the Water Lease for the subject License Area, which would enable the lessee to continue operation of the EMI Aqueduct System that has been in operation for over a century. The Proposed Action continues the use of the system for the transport of surface water, and allows the lessee or its permittees, to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System. In general, the Proposed Action will maintain existing conditions, in compliance with the CWRM D&O and any reservations in favor of the DHHL. No significant impacts on visual resources in the region are anticipated because no new construction or land alteration is planned for the License Area. However, in the short-term, measuring from the current time, where diversions are lower due to the lack of agricultural activity in Central Maui, against the time when Mahi Pono's diversified agriculture needs begin to use the maximum amount of water permitted, there will be a decrease in stream flows and waterfalls that can be viewed along Hāna Highway. However, this expected decrease from the current baseline must be considered in a historical context as well: the impacts to such visual resources under the Proposed Action will be far less than the impacts over the years of sugarcane operations when vastly more water was diverted from East Maui than is planned under the Proposed Action.

Hence, under the Proposed Action, compared to past diversion rates, there is expected to be significantly more water within the East Maui streams. Thus, there is not expected to be a significant impact on visual resources. It is also noted in EIS Section 3.4.15 that views from Hāna Highway were formally recognized as significant from as early as the year 2000 (when President Clinton designated the Hāna Millennium Legacy Trail), when stream diversions were significantly greater than will be the case under the Proposed Action. However, please note that Section 4.9 of the Final EIS has been expanded to further discuss scenic vistas, cascading waterfalls, and stream flow as shown in pages 4-311 to 4-312.

Comment 15: *4. State owned land are crown lands that was given to his people by Kamehameha or kept for his families. The water is not to be taken and the public ignored. WE should come first. The water is for the public, not a corporation to make money?*

Response 15: The Proposed Action contemplates that the BLNR will exercise its statutory authority under HRS § 171-58(c) to issue a Water Lease for the uses described in the EIS. It is our understanding that there is no exception to BLNR's authority to enter in such leases where

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the land in question was formerly held as Crown Lands by the Kingdom of Hawai‘i. We acknowledge that the Proposed Action, the issuance of a 30-year Water Lease by BLNR, requires BLNR, as the Public Trustee of the surface water sources in the License Area, to comply with the State of Hawai‘i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. Please note that Section 1.5 has been added to the Final EIS discusses the Public Trust Doctrine as it relates to the Proposed Action as shown in pages 1-25 to 1-27.

Moreover, as described in the EIS, the Proposed Action would supply water not only for diversified agriculture in Central Maui, but also continue the provision of water for certain historical and industrial uses in Central Maui and to the MDWS for use in Upcountry Maui and the Kula Agricultural Park, as well as allow for the continued delivery of water to the Nāhiku Community by MDWS, which draws water sourced directly from EMI owned land through the Nāhiku Tunnel.

Comment 16: *4.6 – Cultural Resource and Practices: If you had truly searched the Archives, Museums, UH Manoa, the mahele database and OHA, then you know many of the water rights were deeded to Hawaiians from the Great Mahele of King Kamehameha III. What did you find when you did your research re water rights? There is also no mention of the impacts this has to Hana. It has a very significant impact on Hana people too. Who did you find that King Kamehameha III gave the water rights in Koolau to?*

Response 16: We understand your reference to “water rights deeded to Hawaiians from the Great Mahele” and giving “water rights in Koolau” to be references to “appurtenant rights” as determined by the Hawai‘i Supreme Court to be the rights to the use of water “appurtenant” to and utilized by certain parcels of land at the time of their original conversion into fee simple land, when title was confirmed by Land Commission Award (LCA) and title conveyed by the issuance of a Royal Patent. *See Reppun v. Board of Water Supply*, 65 Hawai‘i 531, 551, 656 P. 2d 57, 71 (1982). These rights cannot be severed from the parcels to which they are “appurtenant.” *Id.*

The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior water licenses issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State*

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in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights...as well as other statutorily or judicially recognized interests relating to the right to withdraw water. . . .” It is expected that the lessee under the Water Lease would be subject to similar requirements and would therefore not impair appurtenant water rights.

With regard to the East Maui streams in the License Area covered by the CWRM D&O, the uses of water by those who registered diversions claiming “appurtenant”, or “kuleana” rights were analyzed in detail separately with regard to each stream. In addition, the Cultural Impact Assessment (Appendix F to the Draft EIS) conducted for the proposed Water Lease, recites the history of the LCAs and attaches Tables 4, 5, 6 and 7 listing LCA’s in proximity to the entire License Area. It also summarizes the comments of those contacted regarding the potential impacts on their uses and practices in the proximity of the License Area. Please note that in response to comments received on the Draft EIS, the Cultural Impact Assessment (CIA) (Appendix F to the EIS) has been updated to reflect supplemental information obtained through additional outreach completed by Cultural Survey Hawai’i (CSH) to those who raised comments on the CIA. Section 4.6 of the Final EIS has been updated to include the additional information gathered in the CIA.

Regarding your comment asking about impacts to Hāna, no streams within Hāna are diverted by the EMI Aqueduct System as discussed in Responses #10 and #12 above.

Comment 17: *4.7.4 – Agricultural Economy: Shows no impacts. I think that future impacts to East Maui should also be calculated. Many more of the young generation are beginning to farm and enjoy taro farming, even Hana students and adults are beginning to plant kalo. How can you ask for a 30 year lease showing no impacts to the future of Hana or Keanae/Wailua? Young college grads are returning and realizing that “sustainability is the way to go.” Water is necessary for that to happen.*

Response 17: As discussed in Section 1.3.4 of the Draft EIS, the CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi’ina’au, Palauhulu, Waiokamilo, Wailuānui, ‘Ōhi’a/Waianu, Kualani/Hāmau,¹ and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the

¹ Although this stream continues to be referred to as “Kualani”, it is in fact the easternmost tributary of Waiokamilo Stream and now known as “East Waiokamilo Stream.” Kualani Stream is below the EMI Aqueduct System and has never been diverted (CWRM D&O, FOF 62,184,186).

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CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

Moreover, as discussed in Response #12 above, taro farms in East Maui (from Honopou to Nāhiku), including use of water from streams not subject to the CWRM D&O, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. This acreage is assumed for the Proposed Action and all associated alternatives since nearly all potential new taro cultivation is assumed to draw water from fully restored taro streams which will have the same flows under all alternatives. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch as the CWRM D&O "will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ..." (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in the included pages 4-288 to 4-293.

Comment 18: *4.10 – Impacts and Mitigation Measures: If the current owner of the EMI diversions, ditches and tunnels (A&B) are anything like the past owners of the diversions, ditches and tunnels (A&B), the record of maintenance on the current and past system is very inadequate. Much water leaks out of the ditches & tunnels and the state of disrepair is embarrassing. How can you say you will maintain and repair the system? We drive past it almost every week or two and can see with our own eyes the state of disrepair it's in. A serious plan for this would be necessary, but only with a 5 year lease, if at all.*

Response 18: We disagree with your assertion that the EMI Aqueduct System is in disrepair. EMI staff continually performs maintenance activities along the EMI Aqueduct System to ensure system upkeep and will continue to do so as a part of the Proposed Action. Moreover, as discussed in Response #11 above, EMI has established standard operating procedures to address the clean-up of trash and debris during the course of its activities. Please note that the EMI

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Aqueduct System efficiently delivers water – pursuant to a study conducted by the United States Geological Survey (USGS), the EMI Aqueduct System likely does not lose water on a net basis – to the Central Maui Field Irrigation System on the Mahi Pono farm in the Central Maui agricultural fields. The official location of this delivery point is at the western side of Māliko Gulch.

In addition to the EMI staff's performance of continuous maintenance activities on the EMI Aqueduct System, please note that EMI staff is also working on projects related to diversion removals and improvements as mandated by the CWRM D&O. These diversion structure removal and modification projects are not related to meeting IIFS stream flow requirements – which are already being met – or increasing the efficiency of the system (which again, is already very efficient per the USGS study that is described in Section 2.1.2 of the EIS).

Comment 19: *4.12 – Hazardous Materials: Hazardous/toxic waste is defined as based on their ignitability, corrosiveness, reactivity and toxicity. The potential impacts hazardous materials and waste have on human health and the environment are largely dependent upon their types, quantities, toxicities and management practices.*

East Maui – EMI Personnel use federally regulated herbicides to maintain the trails and access roads used for the maintenance of the EMI Aqueduct system. The proposed system will maintain existing maintenance protocols. No significant impacts on or from hazardous materials in the region are anticipated as the proposed action does not involve any of the use of hazardous materials, except for the continued use of herbicides in compliance with state and federal regulations in connection with the continued maintenance of the EMI Aqueduct system.

It is common knowledge that round up is/was the choice herbicide used by EMI in the past. If you have been paying any attention, Monsanto and other Big Ag Corporations are being sued by thousands of people who have suffered or knows someone who's suffered with cancer especially, but other diseases like asthma, allergies and eczema are other diseases caused by this one herbicide/pesticide. Saying that it's FDA or EPA approved doesn't help the many men who have worked and died working for EMI. No warnings were given of its potential danger. This is still being sprayed today. In the past recent months, twice I have taken pictures of the areas around the streams and going up the EMI roads to the upper regions of diversions/dams, etc. I will try and include them with this letter/email, but if my phone doesn't allow it, I will send it tomorrow. Please explain how you will protect future employees from the hazardous use of round up or any chemicals that are dangerous to humans. Also, can you provide a report of how many men have passed after many years of using these chemicals could help any future or current employees know how dangerous working these fields are or can be working for EMI. We were personal

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friends with at least two of the young men who passed away from cancer after working for EMI for many years, but hear there were more.

Response 19: We did not receive any pictures from you associated with this comment letter. Regarding your comment about Round-Up usage, EMI, has committed to discontinuing its use of Round-Up. This commitment has been in effect since January 2020, and this is now documented in Section 4.12 of the Final EIS. See pages 4-317 of the Final EIS for East Maui relating to EMI operations and 4-318 of the Final EIS for Central Maui relating to Mahi Pono operations. It is also noted that since January 2020 Mahi Pono also committed to discontinuing use of Round-Up, as well as other glyphosate-based herbicides.

With respect to other pesticides, as discussed in EIS Section 4.12 all herbicide and pesticide usage will be used in compliance with their labels and with all State and Federal regulations in connection with the continued maintenance of the EMI Aqueduct System and the agricultural fields in Central Maui.

Your comment alleging deaths of EMI employees due to pesticide exposure lacks specificity. Research into such matters is outside the scope of the EIS, which is to assess the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are discussed throughout Chapter 4 of the EIS. Nevertheless, EMI has confirmed it is not aware of any former employees who have passed way as a direct result of the use of Round-Up in the maintenance of the EMI Aqueduct System.

Comment 20: *We are not against farming to feed Maui nui, other islands then exporting away from there on out. We are against the horrible history of A&B & EMI and the damage done to East Maui. There is no reason why water should be diverted when there is no true farm plan, no plan to keep the food here and hardly any plants in the ground. We should never agree to a lease for 30 years either. We hope you take this letter into consideration and do some serious homework before even reapplying or making the final EIS.*

Response 20: We acknowledge your comments. The Mahi Pono farm plan was included in the Draft EIS and included details on what types of crops are expected to be planted and the estimated acreage and water needed for the farm plan. Section 2.1.4 of the Draft EIS describes the Mahi Pono farm plan and estimated water usage. That discussion has been updated with

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some clarifications and to address rounding errors. Below please see the updated language in page 2-29 of the Final EIS.

However, please note that Mahi Pono's farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation. All of these things must be considered when developing an evolving and feasible diversified agricultural plan for Central Maui.

In response to your comment about keeping the food produced through the farm plan here, as noted in the EIS, at full implementation of the Mahi Pono farm plan, it is estimated that 65% of the farming revenue will be derived from sales within Hawai'i and 35% will come from exports. As noted in Section 4.7.4 of the EIS, the Hawai'i market is too small to use all of the farm products expected to be produced on the Central Maui agricultural fields, so some export is necessary.

Regarding your comment about never agreeing to a 30-year lease, please note that an alternative duration for the subject Water Lease is discussed and evaluated within Section 3.2.2.1 of the Draft EIS and throughout Section 3.4 of the Draft EIS. The Applicant requested that the BLNR consider the issuance of a long-term (30-year) water lease. However, it is acknowledged that the BLNR has the authority to offer a water lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. As discussed in Section 3.2.2.1 of the Draft EIS:

Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

Moreover, as discussed in Section 4 of Appendix I of the Draft EIS (East Maui Water Lease: Agricultural and Related Economic Impacts), and as summarized in EIS Section 2.1.5, a long-term Water Lease is important for the viability of diversified agriculture in Central Maui:

An estimated 10 years will be required for Mahi Pono and lessees to remove volunteer (i.e., rogue) sugarcane and weeds from 30,000 acres, amend soils, install

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field improvements (e.g., irrigation systems, fencing, etc.), build warehouses and other structures), and plant crops.”

In addition, about 5 years or more will be required for avocado, citrus and coffee trees to reach full maturity, and 12 years or more for macadamia nuts. After reaching maturity, macadamia nuts trees will provide yields for 35 years or more, citrus and coffee for 50 years or more, and avocado for over 100 years.

In order for Mahi Pono and other farmers to justify the very substantial investment in a 30,000-acre farm, a long-term water lease will be required. A short-term lease would derail development of the Mahi Pono Farm Plan—or any long term agricultural use of the Central Maui fields including any plan to convert the Central Maui lands to diversified agriculture—because of the risk of not being able to farm for a long enough period to recover their planned investment.

Consequently, a shorter lease term would not be feasible nor conducive to achieving the objectives of the Proposed Action as set forth in Section 1.2 of the Draft EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.² Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

² Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Michael Gach <mrgach@att.net>
Sent: Friday, October 18, 2019 6:48 PM
To: Public Comment
Cc: dlnr@hawaii.gov; Dan.W.Dennison@hawaii.gov
Subject: A&B/Mahi Pono's temporary water permits

We are disappointed that the Board of Land & Natural Resources approved A&B/Mahi Pono's four revocable permits to continue diverting water from East Maui's streams. This is not right or fair.

The stream diversions have harmed the people of East Maui community who rely on this water.

The [Draft Environmental Impact Statement](#) does not cover:

- how to restore the 13 streams in the Honopou to Kailua area and its communities affected. The water diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.
- the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams are breeding grounds for mosquitoes that carry Dengue fever virus to East Maui residents.

Who will take responsibility and the liability for this damage?

Please reconsider this decision.

Barbara & Michael Reed Gach
Maui Home Residences



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Mr. Michael Gach
mrgach@att.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Gach:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *We are disappointed that the Board of Land & Natural Resources approved A&B/Mahi Pono’s four revocable permits to continue diverting water from East Maui’s streams. This is not right or fair.*

Response 1: We acknowledge your comments with regards to the revocable permits that the BLNR have approved. However, please note that it is not within scope to assess the decision regarding the most recent revocable permits. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 2: *The stream diversions have harmed the people of East Maui community who rely on this water.*

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The [Draft Environmental Impact Statement](#) does not cover:

— *how to restore the 13 streams in the Honopou to Kailua area and its communities affected. The water diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 2: With regards to your comment that the stream diversions have harmed the people of the East Maui community, please note that the Draft EIS contains a robust discussion about social and community impacts based upon work done by Earthplan as documented in the SIA (EIS Appendix G) and summarized in Section 4.7.2 of the EIS.

You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-61 to 4-67.

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The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 3: — *the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams are breeding grounds for mosquitoes that carry Dengue fever virus to East Maui residents.*

Response 3: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-61.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets

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will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Comment 4: *Who will take responsibility and the liability for this damage?*

Please reconsider this decision.

Response 4: Your comment about who will take responsibility and liability for this damage is unclear therefore we cannot provide you with a specific response.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: mahalligan1@everyactioncustom.com on behalf of Michele Halligan <mahalligan1@everyactioncustom.com>
Sent: Saturday, October 19, 2019 10:10 AM
To: Public Comment
Subject: Serious concerns about Alexander and Baldwin's Draft Environmental Impact Statement

Dear Mr. Matsukawa,

I am a past resident of Maui (Haiku, Paia and Makawao) who pays close attention to water issues on the island and is tentatively planning a return within two years.

I ask you to please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. With other members of the Sierra Club and concerned citizens of Maui, I believe enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. For the good of the whole island, this is the only sensible approach.

My first objection concerns the impact to native stream life habitat and local residents. Shouldn't this be a number one priority? The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where many people live, farm, and gather. It says only that it is estimated that all of the water will be diverted from the streams 60% of the time! Estimates say the diversions will decimate 85% of native stream life habitat and impact thousands of local residents. This is shameful: The land and its people should be the first considerations, it seems to me.

A second objection is that the DEIS merely assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition." This avoids addressing the far healthier and holistic option of how it would benefit East Maui ecosystems and East Maui communities to have NO diverted streams. I simply cannot understand the rationale unless profit for A & B is the primary consideration. If so, it seems terribly selfish and short-sighted.

A third objection to the DEIS is the lack of an in-depth review of and support for shorter term lease options of less than 30 years. Who knows what uncertainties of future rainfall and water supplies lie ahead during these days of climate change? How on earth is the current long-term lease option a prudent one?

And where is a comprehensive analysis of the threat and damage the diversions have caused to native aquatic species?

Finally, the DEIS should discuss reasonable options for more PUBLIC hiking access to these PUBLIC lands in the proposed lease area without every hiker needed to get permission from EMI.

Thank you for this opportunity to submit comments on this Draft EIS. Please give serious consideration to the aforementioned omissions and do a better job of stewardship for the good of Maui.

Sincerely,
Michele Halligan
447 Park Blvd Ukiah, CA 95482-4206
mahalligan1@gmail.com



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September 3, 2021

Ms. Michele Halligan
447 Park Blvd.
Ukiah, CA 95482

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Halligan:

Thank you for comments dated October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am a past resident of Maui (Haiku, Paia and Makawao) who pays close attention to water issues on the island and is tentatively planning a return within two years.*

I ask you to please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. With other members of the Sierra Club and concerned citizens of Maui, I believe enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. For the good of the whole island, this is the only sensible approach.

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring

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the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the

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noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *My first objection concerns the impact to native stream life habitat and local residents. Shouldn't this be a number one priority? The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where many people live, farm, and gather. It says only that it is estimated that all of the water will be diverted from the streams 60% of the time! Estimates say the diversions will decimate 85% of native stream life habitat and impact thousands of local residents. This is shameful: The land and its people should be the first considerations, it seems to me.*

Response 2: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the

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License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided in pages 4-61 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Regarding impacts to local residents, the socio-economic impacts of the Proposed Action are addressed at length in Section 4.7 of the Draft EIS, and in further detail in Appendices G through I (Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report). Draft EIS Section 4.7 has subsections addressing impacts to populations and impacts (Section 4.7.1), impacts to social characteristics (Section 4.7.2), impacts to the economy and other fiscal considerations (4.7.3), and impacts to the agricultural economy. (4.7.4). The potential socio-economic impacts of the alternatives to the Proposed Action considered by the Draft EIS are analyzed in Section 3.4.11 (Social Characteristics), 3.4.12 (Economic and Fiscal Resources), and 3.4.13 (Agricultural and Related Economic Resources).

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The Draft EIS thoroughly addressed cumulative socio-economic impacts in Section 4.17. That discussion has been further supplemented by updates in the Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report as shown on pages 4-331 to 4-336.

Comment 3: *A second objection is that the DEIS merely assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition.” This avoids addressing the far healthier and holistic option of how it would benefit East Maui ecosystems and East Maui communities to have NO diverted streams. I simply cannot understand the rationale unless profit for A & B is the primary consideration. If so, it seems terribly selfish and short-sighted.*

Response 3: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low

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flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in Section 3.5 the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 4: *A third objection to the DEIS is the lack of an in-depth review of and support for shorter term lease options of less than 30 years. Who knows what uncertainties of future rainfall and water supplies lie ahead during these days of climate change? How on earth is the current long-term lease option a prudent one?*

Response 4: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the

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lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80 of the Final EIS, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 5: *And where is a comprehensive analysis of the threat and damage the diversions have caused to native aquatic species?*

Response 5: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented

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are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 6: *Finally, the DEIS should discuss reasonable options for more PUBLIC hiking access to these PUBLIC lands in the proposed lease area without every hiker needed to get permission from EMI.*

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Response 6: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 of the Final EIS has been revised as shown in pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown in pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the

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Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 7: *Thank you for this opportunity to submit comments on this Draft EIS. Please give serious consideration to the aforementioned omissions and do a better job of stewardship for the good of Maui.*

Response 7: We acknowledge your comments and provided your with detailed responses to your comments above. With regards to stewardship, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Mike Ottman <oceanottman@gmail.com>
Sent: Wednesday, November 6, 2019 9:14 AM
To: ian.c.hiokawa@hawaii.gov; Public Comment
Subject: Mahi Pono proposed water lease

Please accept my comments on the draft EIS for the proposed Water Lease for the Nahiku, Ka'anae, Homomano & Hue'a License areas.

I am very concerned about this proposed lease of the public water because I am a resident that wants our open lands and streams restored back to their natural state where locals can, once again, bring back cultural traditions. Those streams in East Maui need - and deserve - to flow again, allowing for the fish and wildlife that once survived, to thrive again. To also allow farming practices, that have been lost or limited, to grow again. And I fear that the ocean water quality and wildlife will continue to deteriorate if we don't do something to care for it. I have spoken with locals in the areas where the streams were reopened who confirmed that fish and animals - the ecosystem - was restored. And where the natural runoff into the ocean helped revitalize the ocean habitat, allowing fisheries to be replenished.

So much of this island is being lost, little by little, to development and is il-planned. As a lover of Maui and it's natural resources. Please do the right thing and help support our natural beauty and ecosystem by not granting a 30 year license that will allow for continued degradation of Maui.

Sincerely,
Mike Ottman
80 Aleiki pl, Paia



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Mr. Mike Ottman
oceanottman@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Ottman:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments on the draft EIS for the proposed Water Lease for the Nahiku, Ka'anae, Homomano & Hue'a License areas.*

I am very concerned about this proposed lease of the public water because I am a resident that wants our open lands and streams restored back to their natural state where locals can, once again, bring back cultural traditions.

Response 1: We acknowledge your comments and note that you are in opposition to the Proposed Action as you want to restore the streams back to their natural state. Please note that this has not existed for over a century. Please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts and used natural stream flow as a condition to measure impacts against. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the

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number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown in pages 4-61 to 4-62. However, please note that this scenario is not expected to occur, even if the proposed Water Lease is not issued (the No Action alternative). The No Action alternative assessed in Section 3.3 EIS assumes that if no Water Lease were issued, the EMI Aqueduct System could continue to divert approximately 30% of the water available from the Collection Area, plus approximately 4.37 mgd from the privately owned lands between Honopou Stream and Māliko Gulch. That is because the rights under the 1938 Agreement are independent of the Proposed Action under consideration in this EIS. Moreover, a table of the comparative benefits and impacts has been added to summarize all the benefits and impacts from the Proposed Action and reasonable alternatives as shown in pages 3-49 to 3-80 of the Final EIS.

With regards to cultural traditions, Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau),

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East Wailuāiki, West Wailuāiki, Pua‘aka‘a Tributary, and Waia‘aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo‘i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili‘ula, Pua‘aka‘a, Pa‘akea, Waia‘aka, Kapā‘ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, enclosed as pages 4-239 to 4-252. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training,

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inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all constitutionally protected traditional and customary rights.

Comment 2: *Those streams in East Maui need - and deserve - to flow again, allowing for the fish and wildlife that once survived, to thrive again.*

Response 2: We acknowledge your comments. As noted in the above excerpt regarding the HSHEP model and the updated text in pages 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU),

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as defined by the HSheP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See pages 4-56 to 4-67 of the Final EIS.

Comment 3: *To also allow farming practices, that have been lost or limited, to grow again. And I fear that the ocean water quality and wildlife will continue to deteriorate if we don't do something to care for it.*

Response 3: Regarding your comment about farming practices that have been lost or limited, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

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We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu‘u, Ka‘aiea, ‘O‘opuola, Puehu, Nāili‘ilihaele, Kailua, Hanahana, Hoalua, Waipi‘o, Mukupapa and Ho‘olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe‘e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo‘i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in the included pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro

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farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

With regard to your comment about ocean water quality and wildlife, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species (‘O‘opu naniha (*Stenogobius hawaiiensis*), ‘O‘opu akupa (*Eleotris sandvicensis*) and ‘Ōpae ‘oeha‘a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi‘ina‘au, and Honomanū) are the most likely to have estuarine reaches and all three

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of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in shown on the pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on the pages 4-78 to 4-83 of the Final EIS.

Comment 4: *I have spoken with locals in the areas where the streams were reopened who confirmed that fish and animals - the ecosystem - was restored. And where the natural runoff into the ocean helped revitalize the ocean habitat, allowing fisheries to be replenished.*

Response 4: Regarding your comment that increased flow since the cessation of sugarcane operations in Central Maui has resulted in increased water flow and stream life is acknowledged. Please note that many people at the EISPN public scoping meetings on February 22nd and 23rd, 2017 testified noting positive impacts seen from increased stream flow resulting from the

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cessation of sugar operations, please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See page 4-168 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. This is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSHEP model estimated that approximately 79.8% of total HU would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected under the No Action alternative.

Regarding your comment about fisheries, as noted in Response #3 above, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83.

Comment 5: *So much of this island is being lost, little by little, to development and is il-planned. As a lover of Maui and it's natural resources. Please do the right thing and help support our natural beauty and ecosystem by not granting a 30 year license that will allow for continued degradation of Maui.*

Response 5: We acknowledge your comments. Please note as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education.

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These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: nakotakai@everyactioncustom.com on behalf of Nakota Crumbo
<nakotakai@everyactioncustom.com>
Sent: Wednesday, November 6, 2019 12:51 AM
To: Public Comment
Subject: A&B DEIS: 'a'ole nō!

Dear Mr. Matsukawa,

Thank you for reading this. After having read the DEIS, I, a lifelong resident of Maui, former resident of east maui, do hereby ask you to revoke this lease. 30 years is too long, the DEIS is very flawed, and as an island community, and as a world awakening, we need to change how we take advantage of water. Every stream needs to flow mauka to makai, thats the way it's always been and thats the way it needs to be. We need to prioritize all the life forms and life cycles that rely on mauka to makai flow. To allow streams to be fully diverted is to say those species and those biological relationships don't deserve to live or be in existence as they had done for thousands of years. Foolishly clever, greedy, ignorant men set up our current system of water abuse and it's time to rectify the situation. Please, consider our native species, the ecological benefits of restoring stream flow, the negative effects of stagnant flow, and the general ridiculous premise that man should get to prioritize our corporate endeavors over the right of life to exist in currently dry streams. We say no to a 30 year lease, and we say no to dry streams. Do not grant this lease. Mahalo nui!

Sincerely,
Nakota Crumbo
55 Alekanekelo Pl Haiku, HI 96708-5321
nakotakai@gmail.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Nakota Crumbo
55 Alekanekelo Place
Haiku, HI 96708
nakotakai@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Nakota Crumbo:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Thank you for reading this. After having read the DEIS, I, a lifelong resident of Maui, former resident of east maui, do hereby ask you to revoke this lease.*

Response 1: We acknowledge your comments. However, please note that the Draft EIS does not authorize anything. The EIS is an environmental disclosure document that assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 2: *30 years is too long, the DEIS is very flawed, and as an island community, and as a world awakening, we need to change how we take advantage of water.*

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Response 2: We respectfully disagree that 30 years is too long. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

We also respectfully disagree with your comment that the Draft EIS is flawed. The Draft EIS included a "Content Checklist" identifying each element under HAR § 11-200-17 and where within the text of the Draft EIS information on each particular element could be found. Please note that the Content Checklist has been updated based on updated discussions and additions added to the Final EIS as shown subsequently after the front cover.

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Comment 3: *Every stream needs to flow mauka to makai, thats the way it's always been and thats the way it needs to be. We need to prioritize all the life forms and life cycles that rely on mauka to makai flow. To allow streams to be fully diverted is to say those species and those biological relationships don't deserve to live or be in existence as they had done for thousands of years.*

Response 3: We acknowledge your comments. It is generally known that flow from mountain to ocean can provide environmental benefits. Impacts to stream flow and stream life as a result of diversions were assessed in the Draft EIS Section 4.2.1. The HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to help decision-makers determine an appropriate balance between instream and offstream water uses. The mauka to maikai connection is integral to the design of the HSHEP model in estimating the impacts of stream diversions on native species habitat. Impacts to stream habitats and native amphidromous stream species, are analyzed in Section 4.2.1 and Appendix A of the EIS.

Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on

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pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat

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based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83 of the Final EIS.

With regards to your comment about fully diverting streams, the 2018 CWRM D&O set IIFS for 24 of the 36 streams within License Area. Of those 24 streams, 10 streams were fully restored, while others were partially restored for either habitat restoration or mauka to makai connectivity as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4 of the Draft EIS states:

To set the IIFS, the CWRM grouped the streams into four broad categories with different objectives and management strategies: (i) conveyance of water to kalo growing areas for community use; (ii) water for streams with high biological value, (iii) water for streams that have barriers to biological or ecological improvements, and (iv) noninstream use of water for municipal and agricultural uses. (See Figure 1-3). The CWRM D&O significantly reduces the amount of water that can be diverted for offstream uses relative to the capacity and use of the EMI Aqueduct System when sugar was being cultivated. Ten streams were ordered to have no diversions at all (one of which, Waiokamilo, had stream flow fully restored in 2007) (referred to as “Fully Restored Streams” in Figure 1-3), 5 were required to return 64% of BFQ₅₀ in the stream at all times (referred to as “Habitat Streams” in Figure 1-3), and 7 were required to have 20% of BFQ⁵⁰ in the stream at all times (referred to as “Connectivity Streams” in Figure 1-3).

Hence, the streams will not be fully diverted as you allude to.

Comment 4: *Foolishly clever, greedy, ignorant men set up our current system of water abuse and it's time to rectify the situation.*

Response 4: Your comment regarding our current system of water abuse is unclear. However, please note that Section 1.3 of the EIS describes the historical context of the Proposed Action.

Comment 5: *Please, consider our native species, the ecological benefits of restoring stream flow, the negative effects of stagnant flow, and the general ridiculous premise that man should get to prioritize our corporate endeavors over the right of life to exist in currently dry streams. We say no to a 30 year lease, and we say no to dry streams. Do not grant this lease. Mahalo nui!*

Response 5: We acknowledge your comments. Please note that as discussed in Response #3 above, Impacts to stream flow and stream life as a result of diversions were assessed in the Draft EIS Section 4.2.1. The HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to help decision-makers determine an appropriate balance between

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instream and offstream water uses. The mauka to maikai connection is integral to the design of the HSHEP model in estimating the impacts of stream diversions on native species habitat. Impacts to stream habitats and native amphidromous stream species, are analyzed in Section 4.2.1 and Appendix A of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Nathan Yuen <808nateyuen@gmail.com>
Sent: Wednesday, November 6, 2019 10:59 PM
To: Public Comment; Ian.c.hirokawa@hawaii.gov
Subject: Comments on DEIS for A&B/EMI Water Lease in East Maui

November 7, 2019

Mr. Earl Matsukawa
1907 S. Beretania Street, Suite 400 , Honolulu, HI 96826

Mr. Ian Hirokawa
1151 Punchbowl St.
Honolulu, HI 96813

Aloha Mr. Ian Hirokawa, and Mr. Earl Matsukawa:

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) to Alexander & Baldwin and East Maui Irrigation (A&B/EMI) for Nahiku, Ke'anae, Honomanū, and Huelo

Mahalo for allowing me to share my thoughts about the stream diversions in East Maui. For the past 25 years I have hiked throughout the Hawaiian Islands to photograph the native plants, animals, and culture of our islands. I have seen firsthand how the East Maui watershed is remarkable for unique plant, insect, and snail species endemic to the area. With rainfall expected to decrease due to climate change, their survival is uncertain and insecure.

One of the little known facts about the Alexander and Baldwin families is that they directly contributed to the extinction of snails endemic to the Hawaiian Islands – species of Partulina snails found only on Maui. The Alexander and Baldwin families collected land snails by the tens of thousands for their beautiful shells. David Dwight Baldwin was a scientist who collected snails to extinction -- he has become a textbook case in ethics what not to do in science.

Sources [https://en.wikipedia.org/wiki/J. T. Gulick](https://en.wikipedia.org/wiki/J._T._Gulick)
[https://en.wikipedia.org/wiki/David Dwight Baldwin](https://en.wikipedia.org/wiki/David_Dwight_Baldwin)"

I am concerned that no one is taking care of the endangered species in Nahiku, Ke'anae, Honomanū, and Huelo. Surveys for endangered snails, damselflies, and other invertebrates have been inadequate given the large area and the rugged terrain. There are undoubtedly places where plants are sheltered from predators, and protected spots where rare snails or damselflies or other invertebrates make their home. There is also no discussion on habitat restoration for endangered species or the containment and removal of the invasive species that threaten them. The plan should address plan how endangered species will be cared for as rainfall continues to decrease over the Hawaiian Islands.

By taking excessive amounts of water from streams, Alexander and Baldwin has degraded the habitat for many species downstream. The Water Commission ordered stream flow to be restored to 21 streams. Many streams have large unneeded dam structures, basins, pipes and debris have been left in place, which interfere with native stream life. The DEIS stream life survey estimated 36% of migrating native stream life are “entrapped” by diversions. What are the plans for decommissioning and removing these unpermitted structures?

Another consequence of taking excessive water is the creation of stagnant pools along the length of diverted streams. These stagnant pools are breeding grounds for mosquitos that can carry dengue fever and other diseases and ill-effects. There are serious consequences on the people living in these communities. What are the plans for protecting the health and well-being of the people living in communities close by?

The EIS needs to discuss how the 13 streams in the Honopou to Kailua area will be restored, where many people live, farm, and hunt/gather. The plan estimates that all of the water will be diverted from the streams 60% of the time. The EIS needs to discuss the impacts of continuing these diversions, which will negatively impact native stream habitat and the local farming communities nearby.

One of the biggest questions I have is about how much will A&B/EMI pay for the use of the water? Under the State Constitution water is held in the public trust. How much will A&B/EMI pay the State of Hawaii for the use of public water?

The DEIS is an important document that impacts local communities and stream wildlife. A recent Supreme Court stated the State of Hawaii has a duty to malama aina – care for the land. I hope to see this carried out in East Maui. Thank you for this opportunity to comment on the DEIS.

Sincerely,

Nathan Yuen

808nateyuen@gmail.com

91-233 Hanapouli Cir #29T

Ewa Beach, HI 96706



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Mr. Nathan Yuen
91-233 Hanapouli Cirle #29T
Ewa Beach, HI 96706
808nateyuen@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Yuen:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Mahalo for allowing me to share my thoughts about the stream diversions in East Maui. For the past 25 years I have hiked throughout the Hawaiian Islands to photograph the native plants, animals, and culture of our islands. I have seen firsthand how the East Maui watershed is remarkable for unique plant, insect, and snail species endemic to the area. With rainfall expected to decrease due to climate change, their survival is uncertain and insecure.*

Response 1: Please note that Appendix C and Section 4.4 of the Draft EIS described the terrestrial flora and fauna of the License Area in East Maui. Specifically, Section 4.4 of the Draft EIS states:

The License Area encompasses a major portion of the Ko‘olau Forest Reserve. A transect of the forested region from Pōhaku Palaha at the upper boundary of the License Area at the 8,105 foot elevation to the Hāna Highway near Kailua would identify the following plant communities: high elevation grassland; mesic native

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shrubs; mesic 'ōhi'a forest; wet 'ōhi'a forest with native shrubs; tree ferns and matted ferns; wet sedge-rush-native shrubs with scattered 'ōhi'a ohia and other native trees; and mesic exotic trees with scattered planted stands of eucalyptus and paper bark (DLNR, 1986). The steeper valley slopes within the region are dominated by wet habitat matted ferns as well as native and exotic shrubs and scattered 'ōhi'a. Koa-'ōhi'a forests are found in two widely separated, mid-elevation locales, one above Honopou Stream, and the other adjacent to Hanawā Stream.

Moreover, added to the Section 4.4.1 of the Final EIS from the USFWS as shown on page 4-114 to 4-117, there are 43 listed plants that may occur or have final designated critical habitat within or near the vicinity of the License Area. Of those, it was determined that 18 species with designated critical habitat that fall within the License Area.

With regards to climate change, climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on the pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

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Comment 2: *One of the little known facts about the Alexander and Baldwin families is that they directly contributed to the extinction of snails endemic to the Hawaiian Islands – species of Partulina snails found only on Maui. The Alexander and Baldwin families collected land snails by the tens of thousands for their beautiful shells. David Dwight Baldwin was a scientist who collected snails to extinction -- he has become a textbook case in ethics what not to do in science.*

Sources [https://en.wikipedia.org/wiki/J. T. Gulick](https://en.wikipedia.org/wiki/J._T._Gulick)

https://en.wikipedia.org/wiki/David_Dwight_Baldwin"

Response 2: Please note that we are unaware of the statements you make in Comment #2 above. However, please note that the history of the Alexander and Baldwin families is out of scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 3: *I am concerned that no one is taking care of the endangered species in Nahiku, Ke'anae, Honomanū, and Huelo. Surveys for endangered snails, damselflies, and other invertebrates have been inadequate given the large area and the rugged terrain. There are undoubtedly places where plants are sheltered from predators, and protected spots where rare snails or damselflies or other invertebrates make their home.*

Response 3: We acknowledge your comments. Related to the flora and fauna resources, ground and aerial surveys were conducted in 2017 and 2018 by SWCA to field-verify vegetation types and species found during previous surveying and mapping efforts. It was determined that the HIGAP vegetation data layer produced by Gon et al. (2006) was highly representative of the vegetation found in the "Study Area." Please note that the SWCA report, provided as EIS Appendix C, defined the "Study Area" as the collective License Area and the 30,000 acres of agricultural land that it referred to as the "Service Area." The HIGAP mapping data was used to estimate species distributions and potential impacts for the entire 33,000-acre License Area. Threatened and endangered species were categorized by each species' potential to occur in each vegetation type based on habitat needs. Methods have been further clarified in Appendix C, as summarized in Section 4.4 of the Final EIS as shown on page 4-113.

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Regarding damselfly species, please note as discussed in Section 4.4.2 of the Draft EIS:

Twelve invertebrates were observed during the surveys, consisting of the Blackburn's damselfly (Megalagrion blackburni), Hawaiian upland damselfly (Megalagrion hawaiiense), citrus swallowtail butterfly (Papilio xuthus), Monarch butterfly (Danaus plexippus), housefly (Musca domestica), smaller lantana butterfly (Strymon bazochii), mud dauber (Sceliphron caementarium), wandering glider (Pantala flavescens), green darner (Anax junius), Aedes mosquito (Aedes sp.), walking stick (Sipyloidea sipyilus), and witch moth (Ascalapha odorata). All these invertebrates are common in East Maui.

While the endangered damselfly species were not observed, damselfly species were observed during the survey conducted by SWCA. Moreover, it is acknowledged that other species of damselfly are known to, or may, occur within the License Area as indicated by Table 4-5 of the Draft EIS. However, please note that Table 4-5 of the Draft EIS (Table 4-10 in the Final EIS) has been revised to include the Blackburn's sphinx moth, which the United States Fish and Wildlife Service (USFWS) indicated may occur in the License Area. Moreover, during the field work conducted by Trutta in connection with the preparation of the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model, pictures of damselfly were captured and are included in Appendix A.

Please note that Section 4.4.1 and Section 4.4.2 have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Comment 4: *There is also no discussion on habitat restoration for endangered species or the containment and removal of the invasive species that threaten them. The plan should address plan how endangered species will be cared for as rainfall continues to decrease over the Hawaiian Islands.*

Response 4: As discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been

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updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Comment 5: *By taking excessive amounts of water from streams, Alexander and Baldwin has degraded the habitat for many species downstream.*

Response 5: Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the

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Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

Comment 6: *The Water Commission ordered stream flow to be restored to 21 streams. Many streams have large unneeded dam structures, basins, pipes and debris have been left in place, which interfere with native stream life. The DEIS stream life survey estimated 36% of migrating native stream life are “entrapped” by diversions. What are the plans for decommissioning and removing these unpermitted structures?*

Response 6: On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi‘ina‘au, Wailuānui, Honomanū, Waikamoi, Nua‘ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā‘ula, Pa‘akea, Pua‘aka‘a, Puohokamoa, Ha‘ipua‘ena,

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Nua‘ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

With regards to your comment about diversion structures, upon making the voluntary commitment to permanently restore the stream flows in the “taro streams”, EMI returned approximately 90-95% of the natural flow of the streams—all that could be done by adjusting (opening or closing) the diversion gates. The final 5-10% to achieve complete restoration requires modifications to diversions, essentially construction projects, thus triggering various permitting processes that continue to be pursued.

Potential impacts from the abandonment of structures and equipment as it relates to native stream habitat was assessed and discussed in Appendix A, the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report.

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The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

However, please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals. Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion

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ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

The two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped.

Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts.

The above is discussed in more detail in Section 4.2.1 of the Final EIS as shown in pages 4-61 to 4-67.

With regards to your comment “The DEIS stream life survey estimated 36% of migrating native stream life are “entrapped” by diversions” we are unclear where that information came from. Nowhere in the EIS is that stated.

Comment 7: *Another consequence of taking excessive water is the creation of stagnant pools along the length of diverted streams. These stagnant pools are breeding grounds for mosquitos that can carry dengue fever and other diseases and ill-effects. There are serious consequences on the people living in these communities. What are the plans for protecting the health and well-being of the people living in communities close by?*

Response 7: We acknowledge your comments. With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of

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the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown in pages 4-58 to 4-61, pages 4-126 to 4-127, and pages 4-130 to 4-131.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Mauistreams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Regarding your comment about protecting the health and well-being of the people, a watershed management plan will be developed prior to the issuance of the Water Lease. As stated in Section 2.1 of the Draft EIS:

The amount of water awarded by the Water Lease is subject to all applicable requirements under HRS § 171-58. HRS § 171-58(c), (d), and (e) articulate terms for the disposition of the Water Lease. HRS § 171-58(e) requires that any new lease of water rights "shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water

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rights without the foregoing covenant or a watershed management plan."

Furthermore, as stated in Chapter 8 of the Draft EIS, "The content and parameters of a watershed management plan related to the proposed Water Lease are unresolved at this time, but will be resolved before the BLNR can issue the Water Lease."

Comment 8: *The EIS needs to discuss how the 13 streams in the Honopou to Kailua area will be restored, where many people live, farm, and hunt/gather. The plan estimates that all of the water will be diverted from the streams 60% of the time. The EIS needs to discuss the impacts of continuing these diversions, which will negatively impact native stream habitat and the local farming communities nearby.*

Response 8: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided in pages 4-61 to 4-67 of the Final EIS.

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The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

With regards to local farming communities in East Maui, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income

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by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Comment 9: *One of the biggest questions I have is about how much will A&B/EMI pay for the use of the water? Under the State Constitution water is held in the public trust. How much will A&B/EMI pay the State of Hawaii for the use of public water?*

Response 9: An appraisal to determine the fair market value of the Water Lease will be conducted prior to issuance of the Water Lease. The Department of Land and Natural Resources (DLNR), on behalf of the Board of Land and Natural Resources, will commission, or approve the commissioning of, the appraisal. The Economic and Fiscal Impact Study (Appendix H) prepared for the EIS calculates the Water Lease payment based on the equivalent per unit cost under the existing 2019 revocable permit. As discussed in Section 4.7.3 of the Draft EIS on page 4-150,

The revocable permit rent payment sent in November 2018 was \$230,964.24, which represents an increase from the rent that was historically paid. Assuming 16.8 mgd was diverted in 2019 from the License Area under the revocable permit, the rent rate would translate to \$0.038 per thousand gallons.”

However, Section 4.7.3 of the Final EIS has been updated with the approved rental rates in October 2019 as shown on pages 4-277 and 4-283.

With regards to the public trust, we note that surface water, being a public trust resource, means that the Proposed Action requires the BLNR, as the public trustee of the water sources proposed for Water Lease to comply with the State of Hawai'i constitutional and statutory provisions that, together with relevant case law, comprise the Public Trust Doctrine. The dual roles of the BLNR and its sister agency, the CWRM, as public trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still-pending contested case hearing on A&B's 2001 request that the BLNR issue the subject long-term Water Lease at public auction (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action as shown on pages 1-25 to 1-27.

Comment 10: *The DEIS is an important document that impacts local communities and stream wildlife. A recent Supreme Court stated the State of Hawaii has a duty to malama aina – care*

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for the land. I hope to see this carried out in East Maui. Thank you for this opportunity to comment on the DEIS.

Response 10: We acknowledge your comments and have provided you with detailed responses to each of your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Niu Lani olaf <cocolafo@gmail.com>
Sent: Thursday, November 7, 2019 11:56 PM
To: lan.c.hirokawa@hawaii.gov
Cc: Public Comment
Subject: DEIS

Aloha

My name is Olaf Behrendt

We have a little farm in Huelo, east Maui where we are working on a several acres foodforest.

We are very concerned about the DEIS provided to receive a lease from the Hawaiian Government.

The document does not address people's concerns about healthy fish and stream conditions or access to public lands for hunting, gathering or recreational use. It doesn't consider either to restore all streams to their natural flow. The proposed request for a lease of 30 years is absurd.

Farm practices have to adapt to climate, climate change and specific food needs of the population of Maui.

Our family opposes the draft fully.

Mahalo

808 280-0261

Sent from my iPhone



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Olaf Behrendt
cocolafo@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Olaf Behrendt:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *We have a little farm in Huelo, east Maui where we working on a several acres food forest.*

We are very concerned about the DEIS provided to receive a lease from the Hawaiian Government.

Response 1: We acknowledge your comments and understand that you have a farm in Huelo and are concerned with the Proposed Action as noted in the comments below.

Comment 2: *The document does not address people’s concerns about healthy fish and stream conditions or access to public lands for hunting, gathering or recreational use.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not address people’s concerns related to fish and stream conditions and access to public land for hunting, gathering, and recreational use.

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As it relates to fish and stream conditions, impacts to stream flow and stream life as a result of diversions were assessed in the Draft EIS Section 4.2.1. The HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to help decision-makers determine an appropriate balance between instream and offstream water uses. The mauka to maikai connection is integral to the design of the HSHEP model in estimating the impacts of stream diversions on native species habitat. Impacts to stream habitats and native amphidromous stream species, are analyzed in Section 4.2.1 and Appendix A of the EIS.

Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

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The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on the pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on the pages 4-78 to 4-83 of the Final EIS.

With regards to public access, public access within portions of the License Area has been provided, as discussed in Section 4.8 of the Draft EIS, and it is expected either that public access will continue if the scope of the License Area remains the same, or, if the License Area is reduced, that public access within the former License Area lands will be dictated by a State

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agency. However, please note that Section 4.8 of the Final EIS, has been revised as shown on pages 4-305 to 4-309 to include more recreational facilities and an accurate discussion regarding access into the License Area as it relates to recreational activities. Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access to areas that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding impacts to the areas that would allow for more public access. Moreover, impacts of the Modified Lease Area alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories.

With regards to documenting people's concerns, the Social Impact Assessment (SIA), as contained in Appendix G of the and summarized in Section 4.7.2 of the Draft EIS, obtained input from several community members, many of whom have direct and long-term experience with the streams in the subject area. As discussed in Section 4, Preliminary Community Issues, in the SIA contained in Appendix D, seven focus groups were convened in November 2018. Participants in these sessions included residents, farmers and ranchers, and people who are active in environment and sustainability efforts. These participants lived in Ke'anae, Wailuānui, Huelo, Ha'ikū, Kula, Makawao and Pukalani.

Concerns regarding healthy fish and stream conditions, and access for public lands for hunting and gathering were often passionately expressed in these meetings and interviews and are

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presented and analyzed in Section 4 of the SIA and summarized in Section 4.7.2 of the Draft EIS.

Moreover, the Cultural Impact Assessment (CIA) as contained in Appendix F, obtained input from three interviewers, as well as numerous declarations made during the CWRM D&O proceedings. Also, Cultural Surveys Hawai'i, whom conducted the CIA, is conducting follow-up interviews with selected commenters of the Draft EIS to obtain more cultural information from those who have a connection with East Maui which will be included in the Final EIS.

We also note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M) which document people's concerns. Moreover, over 400 comments were received to the Draft EIS.

Comment 3: *It doesn't consider either to restore all streams to their natural flow. The proposed request for a lease of 30 years is absurd.*

Response 3: You are correct that none of the alternatives consider restoring all streams to their natural flow. The Draft EIS did discuss a No Action alternative which assumed that no Water Lease would be issued. or purposes of the No Action (i.e., no Water Lease) alternative, it is reasonable to assume that, in the absence of a Water Lease, EMI will, *at best*, be able to continue to divert the approximately 30% of water that is estimated to represent the average annual amount that originates on private lands within the 50,000-acre Collection Area as outlined by Appendix R-5 added to the Final EIS. Comparative impacts and benefits of the alternatives are discussed in Section 3.4 of the EIS. However, please note that Section 3.5 of the Final EIS includes a comparative table of the various alternatives and the associated impacts of each alternative as shown in pages 3-49 to 3-80.

With regards to your comment about the 30-year lease request, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and

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weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Comment 4: *Farm practices have to adapt to climate, climate change and specific food needs of the population of Maui.*

Response 4: We acknowledge your comments. The crops in Mahi Pono's farm plan were chosen with the goal of increasing Hawai'i's food independence while also meeting criteria for commercial viability and potential. Mahi Pono's farm plan is described in Section 2.1.4 of the EIS. Citrus, row crops, and cattle – all crops included in Mahi Pono's farm plan would accomplish this goal more effectively than the planting of dates, coconuts, plumeria, and neem. The per-acre water requirement for Mahi Pono's cattle ranching operation is expected to be significantly less than the per-acre water requirement typically associated with growing diversified row crops in Hawai'i. The per-acre water requirements for the various crops planned by Mahi Pono are shown Table 2-2 of the Final EIS based on the analysis in the Agricultural and Related Economic Impacts report attached as Appendix I to the EIS.

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With regards to climate change, the EIS does include the most recent information regarding climate change within its analysis. As discussed in Section 4.3.1 of the Draft EIS:

Regular trade winds are key in driving the Hawai‘i’s hydrological cycle, generating rainfall which helps maintain Maui’s water supply. However, a recent study showed that Hawai‘i’s trade winds have decreased in frequency by approximately 30% over the past 37 years, from 291 days per year in 1973, to 210 days per year in 2009 (Garza et. al, 2012). The decrease in the trade winds could have serious implications for the Hawaiian Islands, including adversely impacting local agriculture, native ecosystems and endangered species, and the State’s limited freshwater supply.

Overall, the State of Hawai‘i is experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014)...

Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. Such rainfall patterns increase the amount of stormwater runoff flowing through the region, including through the streams within the License Area that reach the shoreline. The expected climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. (SE & MRC, 2019).

Hence, the EIS recognizes that the State of Hawai‘i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream

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base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Comment 5: *Our family opposes the draft fully.*

Response 5: We acknowledge your comments and understand that you and your family is in opposition to the Proposed Action.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Paula Alcoseba <paula33@hawaii.edu>
Sent: Wednesday, November 6, 2019 4:46 PM
To: lan.c.hirokawa@hawaii.gov; Public Comment
Subject: Maui student comments on East Maui water diversion DEIS

Aloha pumehana, please accept my comments and reject A&B's DEIS.

I care very deeply about this proposed lease of public water because of the environmental and social degradation that occurs with continued water diversions. This practice has posed severely negative consequences to the native aquatic ecosystem and people, primarily kanaka maoli, who depend on constant streamflow; these facts are not sufficiently addressed by the DEIS. This theft of water by A&B has been going on for far too long. We all know that water is a public trust, and this resource should be protected by our government for the benefit of all. But unfortunately, freshwater has been grossly mismanaged for over a century and this has posed irreversible outcomes for the landscape and people. This cannot continue at the expense of the livelihood of our East Maui community and the health of the ecosystem. Therefore, this DEIS should be rejected on several basis:

- A 30-year lease is unwarranted. The DEIS needs to address short term lease options (perhaps annually or biennially), due to uncertainties with rainfall, climate change, and future water supplies. One company should not have a 30-year monopoly on a resource that should be used for everyone. The fact that A&B has had more than 100 years of monopoly on East Maui waters is absolutely criminal. (While many East Maui 'ohana were displaced from their kuleana lands and many died waiting for restored streamflow.)
- The DEIS fails to use accurate scientific data to back-up their study. They only chose to use data on diverted streams as the baseline condition for the stream ecosystem. This is a false representation of what true stream conditions are really like. This allows A&B to avoid discussions of no diversions, and how the practice of not diverting the water would benefit the East Maui ecosystem and communities. This is an important point that needs to be addressed.
- This DEIS does not address how they will be restoring the 13 streams in the Honopou and Kailua area, where many people live, farm, gather, and depend on streamflow. All that is said is that they 'estimate' that all of the water will be diverted 60% of the time. This type of diversion will decimate native stream life and negatively impact thousands of local residents.
- The DEIS does not mention any plans or funding to manage invasive species in the lands they lease, these invasive species outcompete native ones and negatively impact the function of our watersheds. When watershed function is impaired, this affects other terrestrial species that of which East Maui has the endangered 'ope'ape'a (Hawaiian hoary bat), 59 endangered plants, 13 protected birds, and likely hundreds of endemic insects under threat.
- The DEIS does not discuss options for more public access for hiking, hunting, gathering, and cultural purposes. These are public lands and everyone should have reasonable access to these areas. Permission from EMI should not be necessary.
- The DEIS does not address the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams are breeding grounds for mosquitoes who carry diseases like dengue which has affected these community before.
- The DEIS does not sufficiently address protections for native species of 'o'oupu, 'ōpae, hīhīwai, and hapawai whose population status are and most likely Endangered, Threatened, or Near Threatened. There is a lack of data regarding some of these unique species, and therefore there needs to be great care done before doing anything to alter their habitats.
- The DEIS does not address how stream diversions affect coastal fish, invertebrate, and algae populations, many of which the local residents have historically depended on for food or cultural purposes. The DEIS has not sufficiently analyzed the threat and damage the diversions have caused to the native aquatic ecosystem and local community of East Maui.

I humbly ask you to please reject this DEIS and allow A&B to address all of these critical issues. To the legislators who are involved in this process, please do the right thing. You have the power to show the people you represent that big money interests cannot buy your vote. Water is a public trust shared by ALL. The East Maui community and ecosystem has been through enough injustice, and it is time to change the course of history. We longer can blindly allow A&B to divert millions of gallons of water. We need to address the needs of our fragmented ecosystem and people FIRST!

Sincerely,

Paula Alcosoba



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Ms. Paula Alcoseba
Paula33@hawaii.edu

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Alcoseba:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Aloha pumehana, please accept my comments and reject A&B's DEIS.*

I care very deeply about this proposed lease of public water because of the environmental and social degradation that occurs with continued water diversions. This practice has posed severely negative consequences to the native aquatic ecosystem and people, primarily kanaka maoli, who depend on constant streamflow; these facts are not sufficiently addressed by the DEIS.

Response 1: We acknowledge your comments. Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the

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impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe‘e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals’ habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

Specifically, with regards to the native stream aquatic impacts, please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

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Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown on pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text on pages 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See on pages 4-61 to 4-62 of the Final EIS.

With regards to cultural impacts, Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o 'opu, pūpūlo 'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include:

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Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-158 to 4-159 of the Final EIS. The CIA, and Section 4.6 of the EIS on pages 4-239 to 4-252, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

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The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Comment 2: *This theft of water by A&B has been going on for far too long. We all know that water is a public trust, and this resource should be protected by our government for the benefit of all. But unfortunately, freshwater has been grossly mismanaged for over a century and this*

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has posed irreversible outcomes for the landscape and people. This cannot continue at the expense of the livelihood of our East Maui community and the health of the ecosystem.

Response 2: Regarding your comment about the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

With regards to irreversible outcomes for the landscape and people, as noted in Response #1 above, although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history

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in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

Comment 3: *Therefore, this DEIS should be rejected on several basis:*

A 30-year lease is unwarranted. The DEIS needs to address short term lease options (perhaps annually or biennially), due to uncertainties with rainfall, climate change, and future water supplies. One company should not have a 30-year monopoly on a resource that should be used for everyone. The fact that A&B has had more than 100 years of monopoly on East Maui waters is absolutely criminal. (While many East Maui 'ohana were displaced from their kuleana lands and many died waiting for restored streamflow.)

Response 3: We acknowledge your comments. Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

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The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80 of the Final EIS, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

With regards to climate change, climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that

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the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on the pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Comment 4: *The DEIS fails to use accurate scientific data to back-up their study. They only chose to use data on diverted streams as the baseline condition for the stream ecosystem. This is a false representation of what true stream conditions are really like. This allows A&B to avoid discussions of no diversions, and how the practice of not diverting the water would benefit the East Maui ecosystem and communities. This is an important point that needs to be addressed.*

Response 4: We respectfully disagree with your comment that the EIS fails to use accurate scientific data. All of the technical studies used verified modeling and analysis. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the

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Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 5: *This DEIS does not address how they will be restoring the 13 streams in the Honopou and Kailua area, where many people live, farm, gather, and depend on streamflow. All that is said is that they 'estimate' that all of the water will be diverted 60% of the time. This type of diversion will decimate native stream life and negatively impact thousands of local residents.*

Response 5: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS.

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However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-61 to 4-67.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 6: *The DEIS does not mention any plans or funding to manage invasive species in the lands they lease, these invasive species outcompete native ones and negatively impact the function of our watersheds. When watershed function is impaired, this affects other terrestrial species that of which East Maui has the endangered 'ope'ape'a (Hawaiian hoary bat), 59 endangered plants, 13 protected birds, and likely hundreds of endemic insects under threat.*

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Response 6: As discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

With regards to the list of endangered and endemic species that may occur within East Maui, please note that Section 4.4 provides a list of these species, which have been supplemented by the USFWS in the Final EIS as shown on pages 4-127 to 4-128.

Comment 7: *The DEIS does not discuss options for more public access for hiking, hunting, gathering, and cultural purposes. These are public lands and everyone should have reasonable access to these areas. Permission from EMI should not be necessary.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 of the Final EIS has been revised as shown on pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the "Modified Lease Area" alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation

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by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS does not address the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams are breeding grounds for mosquitoes who carry diseases like dengue which has affected these community before.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

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With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-61.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai‘i.

Comment 9: *The DEIS does not sufficiently address protections for native species of ‘o‘oupu, ‘ōpae, hīhīwai, and hapawai whose population status are and most likely Endangered, Threatened, or Near Threatened. There is a lack of data regarding some of these unique species, and therefore there needs to be great care done before doing anything to alter their habitats.*

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Response 9: The HSHEP model clearly demonstrates the link between stream diversion and native stream species habitat. The model quantifies changes to habitat, entrainment and barrier to passage to determine the impact of various management scenarios. There is extensive information associated with the native species of ‘o‘oupu, ‘ōpae, and hīhīwai for in the stream. The hapawai is primarily an estuarine species and little estuarine habitat exists in the steep East Maui streams. Currently none of the native species of ‘o‘oupu, ‘ōpae, hīhīwai, and hapawai are formally listed as Endangered or Threatened species. Additionally, all proposed actions will result in either no change in habitat conditions or improved habitat conditions, thus there is not threat of decreasing their current habitat conditions.

Comment 10: *The DEIS does not address how stream diversions affect coastal fish, invertebrate, and algae populations, many of which the local residents have historically depended on for food or cultural purposes. The DEIS has not sufficiently analyzed the threat and damage the diversions have caused to the native aquatic ecosystem and local community of East Maui.*

Response 10: Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on

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pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the

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combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83 of the Final EIS.

We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the

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remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 11: *I humbly ask you to please reject this DEIS and allow A&B to address all of these critical issues. To the legislators who are involved in this process, please do the right thing. You have the power to show the people you represent that big money interests cannot buy your vote. Water is a public trust shared by ALL. The East Maui community and ecosystem has been through enough injustice, and it is time to change the course of history. We longer can blindly allow A&B to divert millions of gallons of water. We need to address the needs of our fragmented ecosystem and people FIRST!*

Response 11: We acknowledge your comments and have provided you with detailed responses to each of your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Paul-david Burns <pdburns@hawaii.edu>
Sent: Wednesday, November 6, 2019 9:26 PM
To: Public Comment
Subject: Fwd: testimony concerning long term lease requested by Mahi Pono

----- Forwarded message -----

From: **Paul-david Burns** <pdburns@hawaii.edu>
Date: Tue, Nov 5, 2019 at 11:58 PM
Subject: testimony concerning long term lease requested by Mahi Pono
To: <ian.c.hirokawa@hawaii.gov>, <okamoto.comwaterleaseeis@wilson-okamoto.com>

Paul-David Burns
PO Box 901
Hāna, HI, 96713
(808) 264-0699

Aloha Mr Ian Horikawa and Mr. Earl Matsukawa,

I am writing to give my testimony concerning the long term lease requested by Mahi Pono. I have been a teacher and farmer in Hāna for the past 18 years and am married to a Native Hawaiian from Hāna. We have 6 children and one grandchild and have been very active members of our community in many ways. My wife being born and raised in Hāna has strong ties to the land and all the families that reside here.

There are several reasons why I know that it is a big mistake to give a long term lease to divert water from the streams of Hāna. One of my biggest concerns is the effect it has on the fisheries. Hāna was once known for an abundance of fish and that was something that the people could count on to keep their families alive during hard times. Diverting the water over the years had a profound effect on the entire fish ecosystems. Where the fresh water meets the ocean is known as the estuaries where fish come to breed. There are several reasons for this. For one the fresh water feeds the limu that brings in many herbivores fish. Secondly the rivers deposit millions of larvae from the 'opae, 'o'opu, hihiwai and prawns. For their lifecycle to continue they have to go to the ocean to hatch and later make their way back up the rivers to reach maturity. Well these larvae become food for many species of fish waiting for them at the river mouths. By the rivers not running the limu dies, the larvae don't make it so their species die and all of the fish that feed on them have to look elsewhere for food because that food source is no longer coming down. I recently interviewed Uncle Ed Wendt and asked him how the diverting of the rivers affected the fisheries and how has it changed since some of the rivers have returned the flow again. He told me that the rivers that were diverted turned black and dead at the river mouths. There were no fish to be found and mosquitoes were breeding and it was a health hazard. After one year of water being returned the limu had begun to grow and schools of many species can now be seen at the same river mouth that was completely dead a year earlier.

This is a huge concern and liability for the State to allow our fish to be sacrificed. This is literally a form of genocide because we cannot feed our families and are forced to buy the GMO poisoned food that is making us sick. The State is always talking about making rules to save our fish species but the real problem is the water diversions that are destroying the habitat of the fish. Securing our fisheries will ensure the survival of the human race in Hawai'i for generations to come. If there is a disaster and we cannot ship food than we have food security. The decision makers who live in Hawai'i need to look deep into their hearts and think about their own children and their future generations survival and not sell out for a quick profit. The karma and backlash of such an action is so great it will last for lifetimes.

I am a taro farmer and that is the other part of our food security. We need our waters to flow to plant taro in every ahupua'a so that every family has good healthy sustenance. It is our right guaranteed in the Constitution of Hawai'i to have water to sustain our families and that nobody is allowed to hurt the subsistence farmers of the land. This action would obviously break those laws in the constitution and all those who partake in this crime will need to be brought to justice and held accountable for their negligence and crimes against humanity.

Mahi'ai Pono needs to find crops that don't need to be watered, they need to re-plant a forest to bring back the rains so they don't depend on Hāna's water to make money. They are an outside corporation from a different country that will suck our wealth and leave us with nothing just like the sugar plantations did. They cannot be given this privilege which would deny us the people of this land and the ones that the Hawaiian trust is supposed to be benefitting. They are lucky to be here and need to figure out smart farming methods that don't need the kind of water they are asking for.

The difference now is that the people will not sit quietly like our ancestors did in the time of the sugar plantations. This is a generation of educated people that will stand and debate for as long as it takes to be heard and respected. We have aloha 'aina and that is such a mighty force that does not tire out and does not need money. This is our TMT in Maui and we will stand tirelessly just as those on Mauna Kea stand so if you are smart you will avoid this conflict by not awarding this water lease.

Mahalo for taking my testimony and please deeply consider what I am saying and be prepared for a fight that we will never give up because our life depends on it and the survival of our future generations do as well. This is for your future offspring as well so don't sell out for the money, do what is right for the people and the land and all the species that will die if the water is diverted.

Me Ke Aloha Pumehana
Paul-David Burns

From: Paul-david Burns <pdburns@hawaii.edu>
Sent: Wednesday, November 6, 2019 9:29 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Testimony for mahi'ai eis.

Paul-David Burns
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(808) 264-0699

Aloha Mr Ian Horikawa and Mr. Earl Matsukawa,

I am writing to give my testimony concerning the long term lease requested by Mahi Pono. I have been a teacher and farmer in Hāna for the past 18 years and am married to a Native Hawaiian from Hāna. We have 6 children and one grandchild and have been very active members of our community in many ways. My wife being born and raised in Hāna has strong ties to the land and all the families that reside here. There are several reasons why I know that it is a big mistake to give a long term lease to divert water from the streams of Hāna. One of my biggest concerns is the effect it has on the fisheries. Hāna was once known for an abundance of fish and that was something that the people could count on to keep their families alive during hard times. Diverting the water over the years had a profound effect on the entire fish ecosystems. Where the fresh water meets the ocean is known as the estuaries where fish come to breed. There are several reasons for this. For one the fresh water feeds the limu that brings in many herbivores fish. Secondly the rivers deposit millions of larvae from the 'opae, 'o'opu, hihiwai and prawns. For their lifecycle to continue they have to go to the ocean to hatch and later make their way back up the rivers to reach maturity. Well these larvae become food for many species of fish waiting for them at the river mouths. By the rivers not running the limu dies, the larvae don't make it so their species die and all of the fish that feed on them have to look elsewhere for food because that food source is no longer coming down. I recently interviewed Uncle Ed Wendt and asked him how the diverting of the rivers affected the fisheries and how has it changed since some of the rivers have returned the flow again. He told me that the rivers that were diverted turned black and dead at the river mouths. There were no fish to be found and mosquitoes were breeding and it was a health hazard. After one year of water being returned the limu had begun to grow and schools of many species can now be seen at the same river mouth that was completely dead a year earlier.

This is a huge concern and liability for the State to allow our fish to be sacrificed. This is literally a form of genocide because we cannot feed our families and are forced to buy the GMO poisoned food that is making us sick. The State is always talking about making rules to save our fish species but the real problem is the water diversions that are destroying the habitat of the fish. Securing our fisheries will ensure the survival of the human race in Hawai'i for generations to come. If there is a disaster and we cannot ship food than we have food security. The decision makers who live in Hawai'i need to look deep into their hearts and think about their own children and their future generations survival and not sell out for a quick profit. The karma and backlash of such an action is so great it will last for lifetimes.

I am a taro farmer and that is the other part of our food security. We need our waters to flow to plant taro in every ahupua'a so that every family has good healthy sustenance. It is our right guaranteed in the Constitution of Hawai'i to have water to sustain our families and that nobody is allowed to hurt the subsistence farmers of the land. This action would obviously break those laws in the constitution and all those who partake in this crime will need to be brought to justice and held accountable for their negligence and crimes against humanity.

Mahi'ai Pono needs to find crops that don't need to be watered, they need to re-plant a forest to bring back the rains so they don't depend on Hāna's water to make money. They are an outside corporation from a different country that will suck our wealth and leave us with nothing just like the sugar plantations did. They cannot be given this privilege which would deny us the people of this land and the ones that the Hawaiian trust is

supposed to be benefitting. They are lucky to be here and need to figure out smart farming methods that don't need the kind of water they are asking for.

The difference now is that the people will not sit quietly like our ancestors did in the time of the sugar plantations. This is a generation of educated people that will stand and debate for as long as it takes to be heard and respected. We have aloha 'aina and that is such a mighty force that does not tire out and does not need money. This is our TMT in Maui and we will stand tirelessly just as those on Mauna Kea stand so if you are smart you will avoid this conflict by not awarding this water lease.

Mahalo for taking my testimony and please deeply consider what I am saying and be prepared for a fight that we will never give up because our life depends on it and the survival of our future generations do as well. This is for your future offspring as well so don't sell out for the money, do what is right for the people and the land and all the species that will die if the water is diverted.

Me Ke Aloha Pumehana
Paul-David Burns



WILSON OKAMOTO
 CORPORATION
 INNOVATORS • PLANNERS • ENGINEERS

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 September 3, 2021

Mr. Paul-David Burns
 P.O. Box 901
 Hana, HI 96713
 pdburns@hawaii.edu

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Burns:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am writing to give my testimony concerning the long term lease requested by Mahi Pono. I have been a teacher and farmer in Hāna for the past 18 years and am married to a Native Hawaiian from Hāna. We have 6 children and one grandchild and have been very active members of our community in many ways. My wife being born and raised in Hāna has strong ties to the land and all the families that reside here.*

Response 1: We acknowledge your comments and understand that you are a resident in Hāna.

Comment 2: *There are several reasons why I know that it is a big mistake to give a long term lease to divert water from the streams of Hāna. One of my biggest concerns is the effect it has on the fisheries. Hāna was once known for an abundance of fish and that was something that the people could count on to keep their families alive during hard times. Diverting the water over the years had a profound effect on the entire fish ecosystems. Where the fresh water meets the ocean is known as the estuaries where fish come to breed. There are several reasons for this. For one the fresh water feeds the limu that brings in many herbivores fish. Secondly the rivers deposit*

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millions of larvae from the 'opae, 'o'opu, hihiwai and prawns. For their lifecycle to continue they have to go to the ocean to hatch and later make their way back up the rivers to reach maturity. Well these larvae become food for many species of fish waiting for them at the river mouths. By the rivers not running the limu dies, the larvae don't make it so their species die and all of the fish that feed on them have to look elsewhere for food because that food source is no longer coming down. I recently interviewed Uncle Ed Wendt and asked him how the diverting of the rivers affected the fisheries and how has it changed since some of the rivers have returned the flow again. He told me that the rivers that were diverted turned black and dead at the river mouths. There were no fish to be found and mosquitoes were breeding and it was a health hazard. After one year of water being returned the limu had begun to grow and schools of many species can now be seen at the same river mouth that was completely dead a year earlier.

Response 2: We acknowledge your comments. Please note that Hāna nearshore environments or streams should be impacted as the EMI Aqueduct System does not divert any streams in Hāna. However, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses

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on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as pages 4-78 to 4-83 of the Final EIS.

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Comment 3: *This is a huge concern and liability for the State to allow our fish to be sacrificed. This is literally a form of genocide because we cannot feed our families and are forced to buy the GMO poisoned food that is making us sick. The State is always talking about making rules to save our fish species but the real problem is the water diversions that are destroying the habitat of the fish. Securing our fisheries will ensure the survival of the human race in Hawai'i for generations to come. If there is a disaster and we cannot ship food than we have food security. The decision makers who live in Hawai'i need to look deep into their hearts and think about their own children and their future generations survival and not sell out for a quick profit. The karma and backlash of such an action is so great it will last for lifetimes.*

Response 3: As noted in Response #2 above, he collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83 of the Final EIS.

With regards to food security, As discussed in Section 2.1.4 of the EIS, the Mahi Pono farm plan will support food sustainability goals for the State. See also Section 5.2 of the EIS discussing how the Mahi Pono farm plan supports Governor Ige's Sustainability Initiative. Section 4.7.4 of the EIS further explains that at full operation, the Mahi Pono farm plan is anticipated to generate approximately 65% of total farm (crops and cattle) sales from within the State market and approximately 35% of total farm sales from exports. However, the Hawai'i market is too small to use all of the farm products expected to be produced on the Central Maui agricultural fields, and thus some export is necessary. Section 2.1.4 of the Final EIS has been revised to include additional information on Mahi Pono's farm plan, as shown on pages 2-28 to 2-32.

Comment 4: *I am a taro farmer and that is the other part of our food security. We need our waters to flow to plant taro in every ahupua'a so that every family has good healthy sustenance. It is our right guaranteed in the Constitution of Hawai'i to have water to sustain our families and that nobody is allowed to hurt the subsistence farmers of the land. This action would obviously break those laws in the constitution and all those who partake in this crime will need to be brought to justice and held accountable for their negligence and crimes against humanity.*

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Response 4: Please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be

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minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 5: *Mahi‘ai Pono needs to find crops that don‘t need to be watered, they need to re-plant a forest to bring back the rains so they don‘t depend on Hāna‘s water to make money. They are an outside corporation from a different country that will suck our wealth and leave us with nothing just like the sugar plantations did. They cannot be given this privilege which would deny us the people of this land and the ones that the Hawaiian trust is supposed to be benefitting. They are lucky to be here and need to figure out smart farming methods that don‘t need the kind of water they are asking for.*

Response 5: As stated in Response #2 above, please note that Hāna nearshore environments or streams should be impacted as the EMI Aqueduct System does not divert any streams in Hāna. Please note that a factor in the Mahi Pono farm plan, as stated in the EIS, is to be sensitive to the

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existing local farming community. "Mahi Pono does not want to displace local farmers by planting competing crops or artificially accelerating the ramp-up of operations, both of which could have the potential to drive local farmers out of the market." See EIS Section 2.1.4. We also note that focus group sessions held as part of the Social Impact Assessment (SIA) conducted for the EIS and provided as Appendix G to the EIS and summarized in Section 4.7.2 of the EIS, included considerations of impacts to local farming. As discussed in Section 4 of the SIA, seven focus groups were convened in November 2018. Participants in these sessions included residents, farmers and ranchers, and people who are active in environment and sustainability efforts. These participants lived in Ke‘anae, Wailuānui, Huelo, Ha‘ikū, Kula, Makawao and Pukalani. The participants of those focus groups are identified in Tables 7 through 13 of Appendix G. Table 8 of the SIA identifies the ranchers and farmers that participated in the focus groups, with additional farmers being identified in Table 10. The SIA, summarized in Section 4.7.2 of the EIS, obtained input from several community members, many of whom have direct and long-term experience with the streams in East Maui. In particular, Section 5.3.2.3 of the SIA entitled "Local Farmers and Ranchers" discusses the potential social impacts of the Proposed Action on local farmers and ranchers:

The effect of the proposed water lease on Maui-based farmers, rangers and flower growers will depend on whether they can participate in future diversified agriculture in Central Maui. Thus far, there has been discussion regarding setting aside land for local farmers and eventually creating support facilities and services intended to provide means to reduce costs for individual farms. Little or no mention has been made regarding including livestock farmers in Mahi Pono's farm plan.

For Upcountry Maui farmers in the current and 262-acre expansion of Kula Agricultural Park, the effect of the proposed action will depend on how much water they can receive if the water lease is granted. There is a current allocation for the Kula Agricultural Park and the 262-acre expansion.

For East Maui farmers, the proposed water lease would continue to divert water from streams not designated for full restoration, although some are mandated to have partial restoration to support the stream habitat. When active diversion resumes, it is expected that an overall decrease in stream flow will occur in East Maui when compared to current conditions, but there will be an overall increase in stream flow compared to when sugar was fully operational in Central Maui.

Table 8 of the SIA in the Final EIS summarizes the concerns identified by farmers and ranchers who participated in the focus groups.

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The difference now is that the people will not sit quietly like our ancestors did in the time of the sugar plantations. This is a generation of educated people that will stand and debate for as long as it takes to be heard and respected. We have aloha 'aina and that is such a mighty force that does not tire out and does not need money. This is our TMT in Maui and we will stand tirelessly just as those on Mauna Kea stand so if you are smart you will avoid this conflict by not awarding this water lease.

With regards to your comment about planting the forest, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under Hawai'i Revised Statutes (HRS) § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses priority outcomes essential to maintain or restore biological integrity of the watershed. The goals of the watershed management are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Comment 6: *Mahalo for taking my testimony and please deeply consider what I am saying and be prepared for a fight that we will never give up because our life depends on it and the survival of our future generations do as well. This is for your future offspring as well so don't sell out for the money, do what is right for the people and the land and all the species that will die if the water is diverted.*

Response 6: We acknowledge your comments. Please note that we provided you with detailed responses to each of your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Peter Kafka <pkafka@mauigateway.com>
Sent: Friday, November 1, 2019 10:03 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Cc: Peter Kafka
Subject: Comments on the Draft EIS for the Proposed Water Lease for the Nahiku, Ke'anae, Honomano, and Huela Licence areas

Please accept my comments on the Draft EIS for the Proposed Water Lease for the Nahiku, Ke'anae, Honomano, and Huela Licence areas.

I care very deeply about this proposed lease of public water because I am a long time concerned Maui resident who has hiked and explored and become quite familiar with the watershed lands of East Maui over a 30 year period. I am very concerned that no one is taking much care of the precious watershed lands of East Maui and I have noticed serious degradation of the watershed in the last number of years. I have tried to absorb as much of the Draft EIS as possible in recent days and I have several comments that I would like addressed.

1. **Right off in the Executive summary on page "v" the following statement is made; "At full implementation and operation, the Mahi Pono farm plan is projected to generate more than 338 pounds per year of crops, generating \$155.9 million per year in annual food sales and \$329.5 million per year in combined direct and indirect sales." This is probably a typo or Mahi Pono must have its eye on some kind of amazing medicinal crop which can generate \$155 million dollars out of 338 pounds per year. Anyway, to start off a Draft EIS without careful review indicates to me a "rush" and "carelessness".**
2. **Further along in the executive summary on page viii & ix the following statements are made regarding Mitigation Measures if construction materials are needed on the EMI ditch system; "Construction materials arriving from outside Maui should also be washed and/or visually inspected (as appropriate) for excessive debris, plant materials, and invasive or harmful non-native species (plants, amphibians, reptiles, and insects). When possible, any raw materials used in maintenance activities should be purchased from a local supplier on Maui to avoid introducing non-native species not present on the island. Inspection and cleaning activities should be conducted at a designated location. The inspector must be a qualified botanist/entomologist able to identify invasive species that are of concern relevant to the point of origin of the equipment, vehicle, or material." I am presently retired, but spent 24 years at Haleakala National Park, most of which working in the Facilities Management Division. During any construction or repair project we were very cognizant of the possibility of introduction of non-native species, be it plants or insects etc. through construction machinery and/or materials regardless of whether the source was from Maui or an outside source. Purchasing construction materials or using a trucking source from Maui is **NO** guarantee that you are not introducing non-native species. Even though many of the lands in the East Maui Watershed have been subject to introduced non native species, particularly at the lower elevations, this does not mean that we should let our guard down. We need to protect what remains of our native environment. A truck from the western side of Haiku could inadvertently introduce the Coqui Frog to the lands further East in the watershed. So I feel that a more pro-active stance on mitigation measures needs to be addressed. What will the lessee do in terms of pest and weed removal? I do not believe that EMI had an adequate staff to address this problem. Over the years I spent time volunteering with the EMI staff to try to eliminate or control some of the invasive species along the ditch system. I believe a more concerted effort needs to be taken along these lines to save and restore the resource that remains and not just "milk it" for the water.**
3. **In regards to section 3.2.2.1 addressing Alternative Lease Duration. I think that it is entirely appropriate for the State to offer a shorter = 5-year- lease rather than a longer 30 year lease. I think the argument that Mahi Pono needs a longer lease to secure funding is a flawed argument. If that were the case they would not have gone ahead with the purchase and land clearing that they have done. I would like to see them take some positive agricultural steps that will make a difference on Maui before committing to a long term lease. The water will still be there after 5 years. But I want to make sure Mahi Pono is going to be around. I feel this would be an appropriate alternative at this juncture.**

4., I did not see any comments in the Draft EIS involving pro-active fire prevention and suppression. Mention was made that there might be as many as 12,000 acres dedicated to orchards. Will there be some kind of provision to assist the County to protect against the possibility of fire?

5. A number of the alternatives seemed to be dismissed because of the "expense" involved. Alternatives such as using R-1 reclaimed waste water or of lining or utilizing existing reservoirs for water storage. I understand this reasoning, but it also makes me concerned about the responsible stewardship of the East Maui Irrigation ditch system. It is very old, and remarkably still kind of functioning to a degree, but it really is in need of upgrades. Many of the tunnels and open ditches are quite leaky. Would the new lessee be willing to upgrade the system by installing things like PVC transmission pipe in some ditches and tunnels so that water was not wasted. Would the State require the new lessee to provide some upgrades to the system and not just run it further into the ground.

6. And one final thought. The East Maui Irrigation System is a precious historical treasure. There are some bridges and structures along the ditch system that are 100 years old or more. They need protection and preservation and it needs to be done right. Will the State demand this level of protection and preservation?

I am asking that the Draft EIS include this important information. Thank you for this opportunity to submit comments.

**Peter R. Kafka
Haiku, HI 96708**



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Peter Kafka
pkafka@mauigateway.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Kafka:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I care very deeply about this proposed lease of public water because I am a long time concerned Maui resident who has hiked and explored and become quite familiar with the watershed lands of East Maui over a 30 year period. I am very concerned that no one is taking much care of the precious watershed lands of East Maui and I have noticed serious degradation of the watershed in the last number of years. I have tried to absorb as much of the Draft EIS as possible in recent days and I have several comments that I would like addressed.*

Response 1: We acknowledge your comments and understand that you are a long time resident of Maui. Regarding your comment that no one is taking care of the watersheds in East Maui, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under Hawai‘i Revised Statutes (HRS) § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has

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been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses priority outcomes essential to maintain or restore biological integrity of the watershed. The goals of the watershed management are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Furthermore, as described in Section 2.1 of the EIS, A&B was a founding member of the East Maui Watershed Partnership (EMWP). Under the Proposed Action, it is anticipated that the Water Lease lessee will continue to pursue watershed management activities either through an existing watershed management plan or a newly developed watershed management plan or some combination of both. The existing EMWP Management Plan was prepared in July 2009 and amended in July 2018, attached to the EIS as Appendix O. The EMWP Management Plan describes the watershed resources such as water, cultural / physical resources, native flora and fauna, and recreational resources. The EMWP Management Plan identifies the watershed threats and management objectives for the East Maui Watershed.

Regarding your comment about the degradation of the watershed, although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepeʻe, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to

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additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

Comment 2: *Right off in the Executive summary on page "v" the following statement is made; "At full implementation and operation, the Mahi Pono farm plan is projected to generate more than 338 pounds per year of crops, generating \$155.9 million per year in annual food sales and \$329.5 million per year in combined direct and indirect sales." This is probably a typo or Mahi Pono must have its eye on some kind of amazing medicinal crop which can generate \$155 million dollars out of 338 pounds per year. Anyway, to start off a Draft EIS without careful review indicates to me a "rush" and "carelessness".*

Response 2: The production figure in the Executive Summary of the Draft EIS should read 338 million pounds per year, not 338 pounds. This was a typo and has been corrected in the Final EIS, including the Executive Summary as shown on page xii.

However, please note that Section 4.7.3 and Section 4.7.4 of the Draft EIS correctly describes accurate information regarding the benefits of the Mahi Pono farm plan. At Section 4.7.3:

At full operations, the Mahi Pono farm plan will cause a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops. Annual sales are expected to reach \$155.9 million. The pastures would support a cattle herd of about 7,300 cow-and-calf animal units, produce over 4,300 calves per year, and generate revenues of about \$4.8 million per year. The solar farm would generate about 82,125 mW of electricity per year, with revenues of about \$8.2 million per year. Combined farm and energy revenues would reach \$168.9 million per year in direct sales (far exceeding the 2006 revenues from sugar production of \$101 million, and the \$116 million average for the 2008 to 2013 period).

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And at Section 4.7.4:

At full development, the Mahi Pono farm plan would result in a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops.

Impacts related to agricultural economics are discussed in detail in Section 4.7.4 of the EIS based on findings in Appendix I. Please refer to Section 4.7.4 and Appendix I to see discussions regarding the numerous benefits anticipated as a result of the Proposed Action. In summary, at full build-out, the Mahi Pono farm plan is anticipated to produce a significant amount of crops for both local consumption and export generating significant beneficial economic and fiscal impacts, providing numerous direct and indirect jobs, State and County tax revenues, etc.

Comment 3: *Further along in the executive summary on page viii & ix the following statements are made regarding Mitigation Measures if construction materials are needed on the EMI ditch system; "Construction materials arriving from outside Maui should also be washed and/or visually inspected (as appropriate) for excessive debris, plant materials, and invasive or harmful non-native species (plants, amphibians, reptiles, and insects). When possible, any raw materials used in maintenance activities should be purchased from a local supplier on Maui to avoid introducing non-native species not present on the island. Inspection and cleaning activities should be conducted at a designated location. The inspector must be a qualified botanist/entomologist able to identify invasive species that are of concern relevant to the point of origin of the equipment, vehicle, or material." I am presently retired, but spent 24 years at Haleakala National Park, most of which working in the Facilities Management Division. During any construction or repair project we were very cognizant of the possibility of introduction of non-native species, be it plants or insects etc. through construction machinery and/or materials regardless of whether the source was from Maui or an outside source. Purchasing construction materials or using a trucking source from Maui is NO guarantee that you are not introducing non-native species. Even though many of the lands in the East Maui Watershed have been subject to introduced non native species, particularly at the lower elevations, this does not mean that we should let our guard down. We need to protect what remains of our native environment. A truck from the western side of Haiku could inadvertently introduce the Coqui Frog to the lands further East in the watershed. So I feel that a more pro-active stance on mitigation measures needs to be addressed.*

Response 3: We acknowledge your comments. Please note that Section 4.4.1 of the EIS also states:

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To avoid the introduction or transport of new invasive plant species into more pristine portions of the License Area during EMI Aqueduct System maintenance activities, all equipment and vehicles arriving from outside the License Area should be washed and inspected prior to any maintenance activities on cliff sides, near waterfalls, and in other native species-dominated areas in the License Area. Such washing and inspecting should be done at a designated location.

Moreover, please note that the mitigation measures have been expanded on as recommended by the USFWS as shown on pages 4-121 to 4-124.

Specifically, as it relates to invasive species, it is noted in Appendix C that that low-elevation portions of the License Area are already highly impacted by invasive plants. However, it is noted in Appendix C that high-elevation portions of the License Area are predominately dominated by native species and is very likely to contain habitat for several endangered or threatened species. Impacts related to flora and fauna as a result of the Proposed Action are discussed in Section 4.4 of the EIS. Please note that Section 4.4.1 and Section 4.4.2 have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Comment 4: *What will the lessee do in terms of pest and weed removal? I do not believe that EMI had an adequate staff to address this problem. Over the years I spent time volunteering with the EMI staff to try to eliminate or control some of the invasive species along the ditch system. I believe a more concerted effort needs to be taken along these lines to save and restore the resource that remains and not just "milk it" for the water.*

Response 4: EMI staff continually perform repair and maintenance activities the EMI Aqueduct System as necessary. As discussed in the Section 2.1.2 of the Final EIS as shown on page 2-7 under the Proposed Action, “maintenance and repair” involves keeping the waterways clear of trees, weeds, rocks, dirt, and anything that will potentially impede the flow of water. This includes not only in the ditches, but in tunnels and flumes as well. While some of the maintenance and repair work is done by hand, other work requires small tractors and specialized equipment.

Moreover, the lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. It is recognized that Hawai'i's fresh water originates from the forest, which capture and absorb hundreds of inches of rain each year, allowing for slow infiltration and replenishment of our aquifers and streams. Based upon this understanding, the legislature added sub-section (e) to HRS § 171-58, requiring the incorporation of a watershed

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management plan into all water lease agreements to help protect freshwater resources (surface and ground water). In addition to sustaining ground and surface water supplies, healthy forests reduce erosion by holding soil in place, improve water quality, and provide habitat for unique and endangered plants and animals. Focusing on watershed management plans that target mauka protection actions (fencing, removal of hooved animals from important watershed forests, invasive weed control, etc.) that benefit native forests is essential if water lessees are going to have a reliable long-term supply of fresh water. As discussed in Section 2.1 of the Draft EIS, HRS § 171-58 requires the BLNR to jointly develop and implement a watershed management plan with the lessee of any water lease.

Comment 5: *In regards to section 3.2.2.1 addressing Alternative Lease Duration. I think that it is entirely appropriate for the State to offer a shorter -= 5-year- lease rather than a longer 30 year lease. I think the argument that Mahi Pono needs a longer lease to secure funding is a flawed argument. If that were the case they would not have gone ahead with the purchase and land clearing that they have done. I would like to see them take some positive agricultural steps that will make a difference on Maui before committing to a long term lease. The water will still be there after 5 years. But I want to make sure Mahi Pono is going to be around. I feel this would be an appropriate alternative at this juncture.*

Response 5: We acknowledge your comments. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a

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return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Comment 6: *I did not see any comments in the Draft EIS involving pro-active fire prevention and suppression. Mention was made that there might be as many as 12,000 acres dedicated to orchards. Will there be some kind of provision to assist the County to protect against the possibility of fire?*

Response 6: As noted in the EIS, both under current conditions and under the proposed Water Lease, water use does and will continue to include water used for reservoirs and fire protection.

Comment 7: *A number of the alternatives seemed to be dismissed because of the "expense" involved. Alternatives such as using R-1 reclaimed waste water or of lining or utilizing existing reservoirs for water storage. I understand this reasoning, but it also makes me concerned about the responsible stewardship of the East Maui Irrigation ditch system. It is very old, and remarkably still kind of functioning to a degree, but it really is in need of upgrades. Many of the tunnels and open ditches are quite leaky. Would the new lessee be willing to upgrade the system by installing things like PVC transmission pipe in some ditches and tunnels so that water was not wasted. Would the State require the new lessee to provide some upgrades to the system and not just run it further into the ground.*

Response 7: The availability of the use of reclaimed water from the Wailuku-Kahului Wastewater Reuse Facility (WWRF) is discussed in Draft EIS Section 3.1.1.2 (Reclaimed Water), which provides an analysis of the feasibility of the use of reclaimed water from the Wailuku-Kahului WWRF to irrigate the Central Maui fields. As discussed, the recycled water alternative using existing R-2 water from the Kahului WWRF could be considered an alternative as supplemental source. However, R-2 water has limited useability on crops. County of Maui Department of Environmental Management (DEM) does not intend to send this R-2 water to the

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Central Maui agricultural fields. Further consideration of this alternative has been included in Chapter 3 of the FEIS, which has also been supplemented with a discussion about the potential new reuse/effluent disposal facility in Central Maui to be located south-west of the Kahului WWRP that is being considered by the County Department of Environmental Management. See pages 3-9 to 3-11 of the Final EIS.

Please note that the terms and conditions of the Water Lease are at the discretion of the BLNR. With regards to the physical condition of the EMI Aqueduct System, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System. We also note that Appendix D of the EIS provides a Historical Structure Assessment East Maui Aqueduct System prepared by Mason Architects to provide an assessment of the historical significance of the EMI Aqueduct System.

However, the Mahi Pono farm plan will make an efficient use of water. Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown on page 2-25. It should also be noted that the amount of water diverted at any given time through the EMI Aqueduct System will be only what is needed to meet actual needs.

Comment 8: *And one final thought. The East Maui Irrigation System is a precious historical treasure. There are some bridges and structures along the ditch system that are 100 years old or more. They need protection and preservation and it needs to be done right. Will the State demand this level of protection and preservation?*

Response 8: Please note that the terms and conditions of the Water Lease are at the discretion of the BLNR. However, as noted in Response #7 above, Appendix D of the EIS provides a Historical Structure Assessment East Maui Aqueduct System prepared by Mason Architects to provide an assessment of the historical significance of the EMI Aqueduct System.

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Comment 9: *I am asking that the Draft EIS include this important information. Thank you for this opportunity to submit comments.*

Response 9: We acknowledge your comments and have provided you with detailed responses to each of your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: philipki@hawaii.edu
Sent: Thursday, September 26, 2019 3:10 PM
To: Hirokawa, Ian C
Cc: Public Comment
Subject: Re: East Maui Irrigation Draft EIS for Mahi Pono

Thank you!

Sent from my iPhone

> On Sep 26, 2019, at 2:49 PM, Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov> wrote:

>

> Mr. Kitamura,

>

> Please let me know if this link works for you.

>

> https://linkprotect.cudasvc.com/url?a=http%3a%2f%2foeqc2.doh.hawaii.gov%2fEA_EIS_Library%2f2019-09-23-MA-DEIS-East-Maui-Water-Lease.pdf&c=E,1,AepqWXs-KGejX44DuEik6sTcYRJYhIBP-_GuP6r_iAlCdCmCeCHTYMQSnEts3Hhuf2gW4PdjZZad8JZZNq4GM0bm8VhXpREpJhZ6AWmclPhvd2Hw9YKmEA,,&typo=1

>

> Thank you

>

> -----Original Message-----

> From: philipki@hawaii.edu <philipki@hawaii.edu>

> Sent: Thursday, September 26, 2019 2:47 PM

> To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>

> Cc: waterleaseeis@wilsonokamoto.com

> Subject: East Maui Irrigation Draft EIS for Mahi Pono

>

> Aloha Ian,

>

> I couldn't find a copy of the EIS online so I was wondering if you could send it over?

>

> Mahalo,

> Philip Kitamura



10238-04
September 3, 2021

Mr. Philip Kitamura
philipki@hawaii.edu

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Kitamura:

Thank you for comments dated November September 26, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I couldn't find a copy of the EIS online so I was wondering if you could send it over?*

Response 1: Please note that Mr. Ian Hirokawa provided you with a link to the electronic copy of the Draft EIS on September 26, 2019, which is reproduced in the corresponding email. Please note that we did not receive any other correspondence from you.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: griffithrae@everyactioncustom.com on behalf of Rae Griffith
<griffithrae@everyactioncustom.com>
Sent: Saturday, November 9, 2019 6:43 PM
To: Public Comment
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement

Dear Mr. Matsukawa,

Dear Mr. Matsukawa,

Please accept my stated opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Corporate greed is destroying our nation. Must it destroy the clean water necessary for animals and humans on Maui too? We must be good stewards of the land- or we will be held accountable by our Creator.

Sincerely,
Linda Koshel
lost2paradise@gmail.com

Sincerely,
Rae Griffith
Makawao, HI 96768
griffithrae@yahoo.com



WILSON OKAMOTO
 CORPORATION
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 September 3, 2021

Rae Griffith
 griffithrae@yahoo.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Rae Griffith:

Thank you for comments dated November 9, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my stated opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Corporate greed is destroying our nation. Must it destroy the clean water necessary for animals and humans on Maui too? We must be good stewards of the land- or we will be held accountable by our Creator.*

Response 1: We acknowledge your comments and understand that you are opposed to the Proposed Action. With regards to your comment about destroying clean water for animals and humans, please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform

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decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe‘e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals’ habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

With regards to your comment about being good stewards, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and

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implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Raphael Sharpe <raphaelrecords@gmail.com>
Sent: Wednesday, November 6, 2019 4:26 PM
To: Ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas

From: Fred D. Sharpe, P.O. Box 80080, Haiku, HI 96708

To: Ian Hirokawa, Earl Matsukawa

Aloha Mr. Hirokawa and Mr. Matsukawa

Please accept my comments on the subject DEIS.

I care deeply about this proposed lease of public water because I have been a resident of Maui since 1985.

I live by a stream in Huelo, that is supposed to be restored, but we have waited many years for this to happen. I depend on how the water flows and how it is maintained.

Many of my friends also live on streams in the Huelo area, but their streams were not part of the 2018 water commission decision.

These are Waipio, Mokupapa and Ho'olawa streams.

The DEIS does not include their water needs. They have farms. Some of my Hawaiian neighbors have to try to water their farms from streams that get dried up by diversions. They all exist. They just didn't go to the Water Commission.

The DEIS needs to look at the needs of the streams and the communities in the Huelo area that were not part of the Water Commission case that was decided in 2018. It can't reach a conclusion that all the remaining water in the streams can go to Central Maui.

I am a farmer and I witness the importance of this flow to help our fish populations and is vital

for their survival.

The DEIS says that East Maui doesn't have the right kind of conditions for significant fish to live in the ocean. This is not true. The EIS should have a study of the ocean fish in East Maui.

I am really concerned with how the watershed is taken care of.

The DEIS says that a 30 year lease will have no impact on the native plants and animals, but we don't see anyone taking care of the watershed around us for the last 30 years that A&B had leases. We see that there were impacts and the watersheds are struggling to fight back alien plants

I highly suggest to ONLY allow a short term lease option. We cannot know what will be happening 30 years from now.

I am a farmer with NO public water access. I depend on the rain and on the stream. Lately I have shifted my planting towards food security: ulu, jackfruit, and other staple food trees.

I have never used any pesticides in over 30 years. I take care of this land in an ecological, responsible, and organic way. I fear Mahi Pono will use harmful pesticides. The EIS does not say where they will or will not.

Time should be taken to evaluate the real needs and the environmental impact of Mahi Pono's request.

The EIS makes a lot of statements that are lacking any real proof. Like it says that all of East Maui has only 44 acres suitable to grow kalo and 35 acres for truck farms. Our valleys have much more land than that that could be farms and orchards, if there was water. Our East Maui lands used to feed thousands of people. The EIS can not decide that we already have all the water we need when people here suffer when its not enough rain.

I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.

Thank you for handling this request with all of the care that only you can give. Every decision

needs to be made with our keikis in mind and heart.

Sincerely,

Fred D. Sharpe



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Mr. Fred Sharpe
P.O. Box 80080
Haiku, HI 96708
raphaelrecords@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Sharpe:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I care deeply about this proposed lease of public water because I have been a resident of Maui since 1985.*

I live by a stream in Huelo, that is supposed to be restored, but we have waited many years for this to happen. I depend on how the water flows and how it is maintained.

Many of my friends also live on streams in the Huelo area, but their streams were not part of the 2018 water commission decision.

These are Waipio, Mokupapa and Ho‘olawa streams.

Response 1: We acknowledge your comments and understand that you are a resident in Huelo. With regards to the streams mentioned in Comment #1 (Waipi‘o, Mokupapa, and Ho‘olawa), please note that as you mention, these streams were not subject to the 2018 CWRM D&O. Hence, they were not required to have stream restoration. Under the Proposed Action, these

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streams are assumed to be diverted as they have been in the past by the EMI Aqueduct System. With respect to the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai‘i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

Comment 2: *The DEIS does not include their water needs. They have farms. Some of my Hawaiian neighbors have to try to water their farms from streams that get dried up by diversions. They all exist. They just didn't go to the Water Commission.*

Response 2: Please note that as discussed in Response #1 above, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, including the region in Huelo where streams were not restored.

With regards to your comments about farms, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on

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the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Comment 3: *The DEIS needs to look at the needs of the streams and the communities in the Huelo area that were not part of the Water Commission case that was decided in 2018. It can't reach a conclusion that all the remaining water in the streams can go to Central Maui.*

Response 3: Please note that these streams were included in the overall analysis of the Proposed Action which entails diverting water from the License Area, including the Huelo region, for uses described in the EIS. As noted in Response #1 above, the non-petitioned streams that were not subject to the CWRM D&O are assumed to be diverted as they have been in the past by the EMI Aqueduct System.

However, while Mahi Pono's current farm plan assumes the full use of the water that can be diverted from East Maui streams after compliance with the CWRM D&O, the Reduced Water Volume alternative described in Chapter 3 of the EIS provides an assessment of the impacts of less water being made available for the Proposed Action, including Maui Pono farm plan in the Central Maui agricultural fields. Hence, should water be restored in these streams, it is assumed that scenario would fall under this alternative.

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Comment 4: *I am a farmer and I witness the importance of this flow to help our fish populations and is vital for their survival.*

The DEIS says that East Maui doesn't have the right kind of conditions for significant fish to live in the ocean. This is not true. The EIS should have a study of the ocean fish in East Maui.

Response 4: Your comment about the Draft EIS stating that the East Maui has the wrong ocean conditions to have substantial fish populations is unclear. Nowhere is this stated in Appendix B or the Draft EIS. Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

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The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on the pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on the pages 4-78 to 4-83 of the Final EIS.

Comment 5: *I am really concerned with how the watershed is taken care of.*

The DEIS says that a 30 year lease will have no impact on the native plants and animals, but we don't see anyone taking care of the watershed around us for the last 30 years that A&B had

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leases. We see that there were impacts and the watersheds are struggling to fight back alien plants

Response 5: With regards to your comment about how the watershed is taken care of, please note as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

With regards to your comment about no impacts on native plants and animals under the Proposed Action, in summary, the Proposed Action is not anticipated to have any significant impacts on the terrestrial flora and faunal resources. Section 6.3 of Appendix C in the Final EIS states that, *“The increased water flows in the streams would likely have very little impact on terrestrial flora and fauna.”* Hence, this statement refers to all existing flora and fauna within the License Area and is not limited to only native species. As discussed in Section 5.1.2.1 of Appendix C in the Draft EIS, the majority (60%) of the License Area is already composed of “Open / Closed ‘Ōhi‘a Forest,” which mainly constitutes the higher elevation areas where water is not diverted as shown by Figure A-2 of Appendix C. Moreover, the immediate area surrounding the EMI Aqueduct System tends to be composed of “alien forest” which consist of non-native species.

We acknowledge that an EIS must consider cumulative impacts, which means "the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions." HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision-making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream

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diversions as proposed under the Water Lease. However, please note that streams in East Maui have been diverted for over a century and it is not scientifically possible to fully document impacts that first took place more than a century ago as pre-diversion data does not exist.

Section 4.4 of the EIS specifically addresses the impacts of the Proposed Action to flora and fauna resources within the License Area, including a discussion of the cumulative impacts. Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS that was prepared by SWCA included a survey of approximately 33,000 acres of land in East Maui referred to in the SWCA report as the License Area and approximately 30,000 acres of agricultural land in Central Maui that it referred to as the Service Area. These areas were collectively referred to as the Study Area throughout the SWCA report. This report is summarized in Section 4.4 of the EIS, which has been supplemented with a discussion on potential impacts on a watershed by watershed basis, using data produced by the HSHEP model and HIGAP data provided by the State, along with surveys conducted within the region as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Comment 6: *I highly suggest to ONLY allow a short term lease option. We cannot know what will be happening 30 years from now.*

Response 6: We acknowledge your comments. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

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The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also pages 3-49 to 3-80 of the Final EIS, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *I am a farmer with NO public water access. I depend on the rain and on the stream. Lately I have shifted my planting towards food security: ulu, jackfruit, and other staple food trees.*

Response 7: We acknowledge your comment. We understand that many communities do not have access to the public water system. However, please note that this is under the purview of the MDWS, not EMI.

Comment 8: *I have never used any pesticides in over 30 years. I take care of this land in an ecological, responsible, and organic way. I fear Mahi Pono will use harmful pesticides. The EIS does not say where they will or will not.*

Response 8: Regarding your comment about pesticide use, as discussed in Section 4.12 pesticide use is regulated by both State and Federal law. The use of these chemicals is compliant with all laws regulating pesticide use, and certified commercial applicators are utilized as required. Act 45 which was passed by the 2018 Hawai'i Legislature and effective on January 1, 2019 required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. This report as well as any other report required by law is publicly

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available from the respective government entity. The State of Hawai‘i DOA's Pesticide Branch also provides regulatory oversight over Mahi Pono’s pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. It is also noted that since January 2020 Mahi Pono committed to discontinuing use of Round-Up. This information has been included in the Final EIS as shown in pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations.

Comment 9: *Time should be taken to evaluate the real needs and the environmental impact of Mahi Pono’s request.*

Response 9: Please note that a substantial amount of time has been spent on evaluating and assessing the Proposed Action. BLNR determined that A&B was to prepare the EIS for the proposed Water Lease. As explained in Section 1.4 of the Draft EIS, in connection with A&B's May 2001 submittal to the BLNR requesting that the BLNR offer a long-term (30 year) water lease at public auction, A&B offered to perform the associated HRS, Chapter 343 environmental review. As part of the contested case hearing on the proposed Water Lease, NHLC, on behalf of Nā Moku, objected to A&B undertaking the environmental review process, and asserted that the BLNR was required to prepare conduct the environmental review. NHLC later orally withdrew its objection during oral arguments before the BLNR in May 2015. BLNR issued an order on April 14, 2016, directing A&B to scope the EIS, including the identification of the portions of the EIS that could proceed prior to the CWRM issuing a final IIFS decision, and those portions which could not. That scope was filed with the BLNR in June 2016. On July 8, 2016, the BLNR approved the scope and instructed that “A&B and EMI should proceed with the preparation of an environmental impact statement (EIS) in as expeditious manner as possible.” The EIS recites this history in Section 1.3.3 of the Draft EIS and recognizes that the Water Lease will be awarded by public auction. Hence, the EIS process has taken over five years.

Comment 10: *The EIS makes a lot of statements that are lacking any real proof. Like it says that all of East Maui has only 44 acres suitable to grow kalo and 35 acres for truck farms. Our valleys have much more land than that that could be farms and orchards, if there was water. Our East Maui lands used to feed thousands of people. The EIS can not decide that we already have all the water we need when people here suffer when its not enough rain.*

Response 10: As noted in Response #2 above, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely

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primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Comment 11: *I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.*

Thank you for handling this request with all of the care that only you can give. Every decision needs to be made with our keikis in mind and heart.

Response 11: We acknowledge your comments. Please note that we provided you with detailed responses to each of your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC’s website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Rath Kaikala <puuhaua@gmail.com>
Sent: Thursday, November 7, 2019 9:13 AM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Cc: shane.sinenci@mauicounty.us; mavis.medeiros@mauicounty.us
Subject: Comments on Draft EIS for East Maui Water Leases
Attachments: Draft EIS Comment Letter.pdf

Mr. Hirokawa & Mr. Matsukawa,

Please find attached my letter in response/comment to the Draft EIS for East Maui Water Leases. I have CC'd Councilman Shane Sinenci as well.

Mahalo,

Rath Kaikala
Email: puuhaua@gmail.com
Cell: (425) 791-0600

Rath Kaikala
3909 Ringdove Way
Roanoke, TX 76262
November 6, 2019

Mr. Ian Hirokawa
Board of Land & Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Mr. Earl Matsukawa
Wilson Okamoto Corporation
1907 S. Beretania Street, STE 400
Honolulu, Hawaii 96826

RE: Comments on the Draft EIS for East Maui Water Leases:

Dear Mr. Hirokawa & Mr. Matsukawa:

Although I currently reside in Texas, I was born and raised in Hāna and still have interest in family land there. I try hard to keep up with the goings on in Hāna and happened to be in Hāna from November 3 – November 10, 2019.

I've been aware that there has been an effort to acquire a longer water lease by A&B for some time, and that there was an impact statement being prepared, but had not yet heard that a draft had been submitted for review prior to my arrival in Hāna.

I am writing with some concerns I have regarding the Draft EIS. I received a copy to review on Monday November 4, 2019. Unfortunately, I only had a few days' time to review as much as possible and provide comment. You will find my concerns/comments listed below:

- **Review & Comment Period:** During the short time I had to review the extensive document it came to my attention that the Hāna community did not receive the document immediately. The shortened time frame they had left to review such a large document is **inadequate** for someone who would be reviewing the document on a full-time basis and as such is **completely unreasonable** for the community to have an opportunity to carefully review the entire contents of the document. I myself read quickly and have experience reading documents of this scale, and it took me over an hour and a half just to review the Executive Summary where I immediately identified verbiage that was concerning. As I'm sure you are both aware, most Hāna residents have to work more than 1 job, or are commuting to Central Maui, and on top of that live a subsistence lifestyle which

Mr. Ian Hirokawa
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substantially reduces the amount of time they have to carefully review the entire document. Due to this fact, I am requesting on behalf of the Hāna community an extension to the review period conducive and accommodating to these circumstances. In the second to the last paragraph under the section **Mitigation Measures** on page x it is stated that *“The fundamental value that will help bring people to the same table is trust.”* In order for the community to start to trust this process it is required for A&B to put the first foot forward by providing total transparency and to accommodate the community in ways that may go beyond what is standard practice, or what minimums are required by applicable law. I concede to the Maui County Council to determine and provide to you what they believe is an adequate extension for the community to review the Draft EIS.

- **Executive Summary, Significant Beneficial and Adverse Impacts, Page v:** In the last paragraph in/on this section/page, there are financial projections represented:
 - **“At full implementation the Mahi Pono farm plan is projected to generate more than 338 pounds...”** – this appears to be a typo, as it is not feasible to generate the revenue represented with a production value of this amount.
 - **Central Maui Environmental Impacts of the Mahi Pono farm plan** – I was unable to find within the table of contents any discussion around projections (if any currently) or reference to an EIS for the farm plan itself. It seems to me that a 262-acre farm that is split between 7,000 – 12,000 head of cattle and crops would have a significant impact on the local environment in Central Maui. My concern is primarily for runoff or overspray of cow excrement and/or excrement/waste particulates, pesticides or fertilization into the ocean that could further negatively affect native fish species. Maui is an island, and any impact in Central Maui to the sea will have a direct impact on the entire island. Hāna relies heavily on fishing. Diversion of water from East Maui to Central Maui will already have an adverse effect on fish populations (i.e. spawning) that the community’s subsistence lifestyle relies on. I would not be in support for this project to move forward knowing that it would be the first “domino” to tip over and cause a cascade of negative impacts. An EIS for the Mahi Pono farm plan would be important information to have in order to fully weigh and be as responsible as possible by considering the impacts of issuing this water lease.
- **Executive Summary, Mitigation Measures, Page viii:** Verbiage throughout this section is concerning. The use of the word “should” in bullet points relating to how A&B intends to maintain the EMI Aqueduct System **needs to be replaced** with the word “will”. Referencing back to my first bullet point, establishing trust with the community rests solely in A&B’s hands. The verbiage in both the EIS and the lease (if issued) needs to hold A&B to the highest possible standards, and they should be willing to do so no matter the financial impact to A&B. As a for profit enterprise, this responsibility and the associated costs should be factored and held as a cost of doing business, and they should hold this responsibility with the same respect and stewardship that Hāna community does.

Mr. Ian Hirokawa
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My above comments/concerns represent just the Executive Summary (just a small *fraction*) of the 2,700-page Draft EIS. Based on the concerns I've outlined above, if I had been provided enough time to review the entire document, I have no doubt I would have identified many more areas of concern that I could have addressed. I ask that you provide an adequate extension to the review period so that the first step in establishing trust within the community can be achieved. Not only will this start the building of trust, it will also ensure that our unique and delicate Hawaiian ecosystem will be provided the appropriate level of consideration and respect required to ensure that all future generations will benefit from it.

Sincerely,

Rath Kaikala

Rath Kaikala
Cell: (425) 791-0600
Email: puuhaua@gmail.com

CC: Shane Sinenci, Councilman Maui County



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10238-04
 September 3, 2021

Rath Kaikala
 3909 Ringdove Way
 Roanoke, TX 76262
puuahua@gmail.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Rath Kaikala:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Although I currently reside in Texas, I was born and raised in Hāna and still have interest in family land there. I try hard to keep up with the goings on in Hāna and happened to be in Hāna from November 3 – November 10, 2019.*

I’ve been aware that there has been an effort to acquire a longer water lease by A&B for some time, and that there was an impact statement being prepared, but had not yet heard that a draft had been submitted for review prior to my arrival in Hāna.

I am writing with some concerns I have regarding the Draft EIS. I received a copy to review on Monday November 4, 2019. Unfortunately, I only had a few days’ time to review as much as possible and provide comment. You will find my concerns/comments listed below:

Response 1: We acknowledge your comments and understand that you are a former resident of Hāna. Please note that the Draft EIS was published on September 8, 2019 in *The Environmental Notice*. Please note that we have provided you with detailed responses to your comments below.

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Comment 2: Review & Comment Period: *During the short time I had to review the extensive document it came to my attention that the Hāna community did not receive the document immediately. The shortened time frame they had left to review such a large document is inadequate for someone who would be reviewing the document on a full-time basis and as such is completely unreasonable for the community to have an opportunity to carefully review the entire contents of the document. I myself read quickly and have experience reading documents of this scale, and it took me over an hour and a half just to review the Executive Summary where I immediately identified verbiage that was concerning. As I'm sure you are both aware, most Hāna residents have to work more than 1 job, or are commuting to Central Maui, and on top of that live a subsistence lifestyle which substantially reduces the amount of time they have to carefully review the entire document. Due to this fact, I am requesting on behalf of the Hāna community an extension to the review period conducive and accommodating to these circumstances.*

Response 2: Please note that there is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comments were received during the statutory comment period.

Regarding your comment about the Draft EIS being received by Hāna Public Library after publication, we originally sent one hard copy to the Wailuku Public Library as that is the most centralized location between East Maui, Upcountry Maui, and Central Maui. However, at the request of a County councilmember, two more hard copies were sent out; one to the Hāna Public Library and one to Maui County Council Office. Moreover, please note that pursuant to HAR § 11-200-21 a distribution list of reviewers needed to be approved by the State of Hawai'i Office of Environmental Quality Control (OEQC), which notified the reviewers of the availability of the Draft EIS. The distribution list included Federal, State, and County agencies, list of depositories, as well as organizations and individuals (who provided addresses) that participated in the early consultation and EIS Preparation Notice (EISPN) scoping meetings and commented on the EISPN. This list was provided as Table 9-2 in the Draft EIS. Hence, the Draft EIS- was distributed in compliance with the required State process.

Comment 3: *In the second to the last paragraph under the section Mitigation Measures on page x it is stated that "The fundamental value that will help bring people to the same table is trust." In order for the community to start to trust this process it is required for A&B to put the first foot forward by providing total transparency and to accommodate the community in ways that may go beyond what is standard practice, or what minimums are required by applicable law. I concede to the Maui County Council to determine and provide to you what they believe is an adequate extension for the community to review the Draft EIS.*

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Response 3: We acknowledge your comments. However, please note that the quote that you reference is in regards to the mitigation measures identified in the Social Impact Assessment (Appendix G) with regard to social cumulative impacts experiences by many stakeholders within the East Maui region. Moreover, as noted in Response #2 above, note that there is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comments were received during the statutory comment period.

Comment 4: Executive Summary, Significant Beneficial and Adverse Impacts, Page v: *In the last paragraph in/on this section/page, there are financial projections represented:*

- *“At full implementation the Mahi Pono farm plan is projected to generate more than 338 pounds...” – this appears to be a typo, as it is not feasible to generate the revenue represented with a production value of this amount.*

Response 4: The production figure in the Executive Summary of the Draft EIS should read 338 million pounds per year, not 338 pounds. This was a typo and has been corrected in the Final EIS, including the Executive Summary as shown on page xii.

However, please note that Section 4.7.3 and Section 4.7.4 of the Draft EIS correctly describes accurate information regarding the benefits of the Mahi Pono farm plan. At Section 4.7.3:

At full operations, the Mahi Pono farm plan will cause a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops. Annual sales are expected to reach \$155.9 million. The pastures would support a cattle herd of about 7,300 cow-and-calf animal units, produce over 4,300 calves per year, and generate revenues of about \$4.8 million per year. The solar farm would generate about 82,125 mW of electricity per year, with revenues of about \$8.2 million per year. Combined farm and energy revenues would reach \$168.9 million per year in direct sales (far exceeding the 2006 revenues from sugar production of \$101 million, and the \$116 million average for the 2008 to 2013 period).

And at Section 4.7.4:

At full development, the Mahi Pono farm plan would result in a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million

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pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops.

Impacts related to agricultural economics are discussed in detail in Section 4.7.4 of the EIS based on findings in Appendix I. Please refer to Section 4.7.4 and Appendix I to see discussions regarding the numerous benefits anticipated as a result of the Proposed Action. In summary, at full build-out, the Mahi Pono farm plan is anticipated to produce a significant amount of crops for both local consumption and export generating significant beneficial economic and fiscal impacts, providing numerous direct and indirect jobs, State and County tax revenues, etc.

Comment 5: *Central Maui Environmental Impacts of the Mahi Pono farm plan – I was unable to find within the table of contents any discussion around projections (if any currently) or reference to an EIS for the farm plan itself. It seems to me that a 262-acre farm that is split between 7,000 – 12,000 head of cattle and crops would have a significant impact on the local environment in Central Maui.*

Response 5: Please note the Mahi Pono farm plan is described in detail in Section 2.1.4 of the Draft EIS, which provides projected water use of both surface and ground water. This section of the EIS has been updated to include a description of Mahi Pono's current uses of the Central Maui agricultural fields. Please see pages 2-30 and 2-32 of the Final EIS. The Central Maui agricultural fields proposed for diversified agricultural uses by Mahi Pono are comprised of approximately 30,000 acres, not 262 acres. The Proposed Action would result in the transition of approximately 30,000 acres of former sugarcane operation to a diversified agricultural operation.

Impacts of the Mahi Pono farm plan are addressed in Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), which provides a comprehensive description and impact analysis of the East Maui Lease Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts.

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Comment 6: *My concern is primarily for runoff or overspray of cow excrement and/or excrement/waste particulates, pesticides or fertilization into the ocean that could further negatively affect native fish species. Maui is an island, and any impact in Central Maui to the sea will have a direct impact on the entire island. Hāna relies heavily on fishing. Diversion of water from East Maui to Central Maui will already have an adverse effect on fish populations (i.e. spawning) that the community's subsistence lifestyle relies on. I would not be in support for this project to move forward knowing that it would be the first "domino" to tip over and cause a cascade of negative impacts. An EIS for the Mahi Pono farm plan would be important information to have in order to fully weigh and be as responsible as possible by considering the impacts of issuing this water lease.*

Response 6: The Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion. Once crops are planted (particularly the permanent orchard crops), ground disturbance will be a limited, resulting in a further reduction of dust and erosion. Also, ranchers will rotate their cattle among paddocks to ensure that the pastures are not overgrazed and waste load do not exceed what the grasses can absorb. In addition, lease terms will require farm tenants to follow BMPs. Also, as noted in Response \$5 above, the environmental impacts of the Mahi Pono farm plan in Central Maui was assessed as described in Chapter 4.

Regarding your comment questioning whether the Water Lease could impact fish populations and subsistence lifestyles, . Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many

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segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow

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restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa‘akea) have connectivity flow restoration ordered. Pa‘akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83 of the Final EIS.

Your opposition to the Water Lease is acknowledged. Your comment letter and this response will be included in the Final EIS.

Comment 7: *Executive Summary, Mitigation Measures, Page viii: Verbiage throughout this section is concerning. The use of the word “should” in bullet points relating to how A&B intends to maintain the EMI Aqueduct System **needs to be replaced** with the word “will”. Referencing back to my first bullet point, establishing trust with the community rests solely in A&B’s hands. The verbiage in both the EIS and the lease (if issued) needs to hold A&B to the highest possible standards, and they should be willing to do so no matter the financial impact to A&B. As a for profit enterprise, this responsibility and the associated costs should be factored and held as a cost of doing business, and they should hold this responsibility with the same respect and stewardship that Hāna community does.*

Response 7: Your comments are unclear as you do not specifically reference any of the mitigation measures presented in the Executive Summary. However, please note that the EIS does not authorize or mandate any activity. The EIS is an environmental disclosure document that assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 8: *My above comments/concerns represent just the Executive Summary (just a small fraction) of the 2,700-page Draft EIS. Based on the concerns I’ve outlined above, if I had been provided enough time to review the entire document, I have no doubt I would have identified many more areas of concern that I could have addressed. I ask that you provide an adequate extension to the review period so that the first step in establishing trust within the community can be achieved. Not only will this start the building of trust, it will also ensure that our unique and*

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delicate Hawaiian ecosystem will be provided the appropriate level of consideration and respect required to ensure that all future generations will benefit from it.

Response 8: We acknowledge your comments. Please note as discussed in Response #2 above, there is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comments were received during the statutory comment period.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Sent: Thursday, November 7, 2019 8:26 AM
To: Public Comment
Subject: FW: Water flow on east Maui

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

From: Rhonda Holtz <solisolilomilomi@icloud.com>
Sent: Wednesday, November 6, 2019 5:27 PM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Subject: Water flow on east Maui

Please keep the water flowing for the kalo farmers and fishing rights of humans here on Maui. Please don't make money from the big corporate off island companies.

Rhonda Holtz. 1090 West Kuiaha, Haiku, Hi, 96708.

rhonda20@gmail.com

Sent from my iPhone



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10238-04
September 3, 2021

Ms. Rhonda Holtz
Rhonda20@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Holtz:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please keep the water flowing for the kalo farmers and fishing rights of humans here on Maui. Please don't make money from the big corporate off island companies.*

Response 1: We acknowledge your comments. With regards to kalo farming, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi‘ina‘au, Palauhulu, Waiokamilo, Wailuānui, ‘Ōhi‘a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM’s intent to regulate

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where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for taro were identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on pages 1-19 to 1-22 of the Final EIS. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration status); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available

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to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in the included pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

With regards to fishing, Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically

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focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83 of the Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: texturelighting@everyactioncustom.com on behalf of Robert Cole
<texturelighting@everyactioncustom.com>
Sent: Thursday, October 3, 2019 7:30 AM
To: Public Comment
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement

Dear Mr. Matsukawa,

I think the A&B draft is fine as it is, enough already we need the food security for the majority of the population. Move on.

Thank you,
Robert Cole

Sincerely,
Robert Cole
71 Makawao Ave Makawao, HI 96768-8899
texturelighting@gmail.com

From: Robert Cole <texturelighting@gmail.com>
Sent: Tuesday, November 5, 2019 12:07 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Cc: Lucienne de naie
Subject: Comments on Draft EIS for the Proposed Lease (Water Lease) for license areas.

**Specifically the Nahiku, Ke'anae, Honumano, and Huelo License areas.

My comments are as follows:

I care about having a properly and inclusively executed DEIS/EIS because I am a concerned upcountry Maui resident, an experienced invasive species control person, and I am concerned the DEIS does not fully address these issues.

- The EIS needs to include a thorough and complete plan for Invasive/Non-Native species control. Without this information the watershed will continue to degrade. Reference Chapter 4, pages 94-96
- The EIS needs to be more succinct and correct about the effect on Upcountry water users, the information presented in the DEIS is incomplete and in a few cases misleading.

Thank you for the opportunity to submit comments on the Draft EIS.

Respectfully,
Robert L Cole
Pukalani, HI.

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Render Theory: It either renders or it doesn't.



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September 3, 2021

Mr. Robert Cole
71 Makawao Ave.
Makawao, HI 96768
texturelighting@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Cole:

Thank you for comments dated October 3, 2019 and November 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

October 3, 2019 Email

Comment 1: *I think the A&B draft is fine as it is, enough already we need the food security for the majority of the population. Move on.*

Response 1: We acknowledge your comments. With regards to food security, as discussed in Section 2.1.4 of the EIS, the Mahi Pono farm plan will support food sustainability goals for the State. See also Section 5.2 of the EIS discussing how the Mahi Pono farm plan supports Governor Ige's Sustainability Initiative. Section 4.7.4 of the EIS further explains that at full operation, the Mahi Pono farm plan is anticipated to generate approximately 65% of total farm (crops and cattle) sales from within the State market and approximately 35% of total farm sales from exports. However, the Hawai‘i market is too small to use all of the farm products expected to be produced on the Central Maui agricultural fields, and thus some export is necessary. Section 2.1.4 of the Final EIS has been revised to include additional information on Mahi Pono's farm plan, as shown on pages 2-28 to 2-32.

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November 5, 2019 Email

Comment 2: ***Specifically the Nahiku, Ke'anae, Honumano, and Huelo License areas.*

My comments are as follows:

I care about having a properly and inclusively executed DEIS/EIS because I am a concerned upcountry Maui resident, an experienced invasive species control person, and I am concerned the DEIS does not fully address these issues.

Response 2: Your comment about having a properly and inclusively executed DEIS is unclear. The Draft EIS fully complied with all relevant requirements, including the content requirements set forth in §11-200-16 and 11-200-17, and the Draft EIS even includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement. The Draft EIS meets the necessary content requirements and for that reason we believe that it is a properly executed EIS. We also note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). Moreover, over 400 comment were received in response to the Draft EIS. The Applicant made every reasonable effort to convey information through the Draft EIS in a manner that is accurate, thorough, and appropriately concise in order to provide the public with an opportunity to fairly analyze the potential impacts of the Proposed Action. Hence we also believe the EIS is inclusive.

With regards to your comment about invasive species, it is noted in Appendix C that that low-elevation portions of the License Area are already highly impacted by invasive plants. However, it is noted in Appendix C that high-elevation portions of the License Area are predominately dominated by native species and is very likely to contain habitat for several endangered or threatened species. Impacts related to flora and fauna as a result of the Proposed Action are discussed in Section 4.4 of the EIS. Please note that Section 4.4.1 and Section 4.4.2 have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS. See pages 4-121 to 4-124 and pages 4-129 to 4-131 of the Final EIS.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the

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time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Comment 3: *The EIS needs to include a thorough and complete plan for Invasive/Non-Native species control. Without this information the watershed will continue to degrade. Reference Chapter 4, pages 94-96*

Response 3: As noted in Response #2 above, Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Moreover, Appendix C of the Draft EIS specifically addresses the flora and fauna considerations of the Proposed Action and alternatives. To minimize the impacts to flora and fauna in the License Area, Section 7 of Appendix C identifies several avoidance and minimization measures, including measures to avoid the introduction of additional invasive species to the License Area, which is harmful to the watershed and to native flora which are also reflected in Section 4.4 of the EIS.

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Comment 4: *The EIS needs to be more succinct and correct about the effect on Upcountry water users, the information presented in the DEIS is incomplete and in a few cases misleading.*

Response 4: Your comment that the information regarding Upcountry Maui water being misleading is unclear as you do not offer any specificity and therefore we cannot provide a specific response. However, Upcountry Maui water needs are predominantly supplied by surface water obtained outside of the License Area for a portion of the Upcountry Maui Water System, in the areas that are served by the Upper and Lower Kula Systems. These systems are supplied primarily by the Upper and Lower Waikamoi Flumes, respectively, and the waters are treated at the Piiholo and Olinda treatment facilities. As discussed in Section 2.1.3.1 of the Draft EIS, these systems are situated on private lands now owned by EMI and are operated and maintained by EMI staff. However, please note that this section mistakenly referred to Mahi Pono as the landowner of the land that the Upper and Lower Waikamoi Flumes are situated on. This has been corrected in the Final EIS as shown on page 2-13.

The source of water for these systems comes from land owned by EMI and the MDWS' right to access this source on a long-term basis is contingent upon the issuance of the Water Lease. As discussed in Section 3.3 of the Draft EIS:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS. At this point in time, it is unknown whether sufficient groundwater resources exist in Upcountry Maui to meet these water demands. It is anticipated that the development of alternative water-source infrastructure would be prohibitively expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment.

However, please note that the above discussion regarding the Upper and Lower Kula Systems have been supplemented with the additional figure as shown on page 2-16 which has been added to Section 2.1.3.1 of the Final EIS to accurately show which system is serving which community in Upcountry Maui.

As discussed in Section 2.1.3.1 of the Draft EIS, *“The Upcountry Maui Water System relies on three surface water sources, which accounts for approximately 80-90 percent (13 mgd) of water delivered through the Upcountry Maui Water System (CWRM D&O, FOF 799).”* In addition to the Upper and Lower Waikamoi flume sources, serving the Upper and Lower Kula Systems, there is the EMI Aqueduct System, which is the primary source for the Makawao System, which provides water via the Wailoa Ditch to the MDWS' Kamole-Weir Water Treatment Plant (WTP). As discussed in Section 2.1.3.1 of the Draft EIS, *“average daily use by the MDWS from*

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the Wailoa Ditch is about 7.1 mgd, which includes water processed by the Kamole-Weir Water Treatment Plant (WTP) (discussed in further detail below) and non-potable water for the KAP, which receives water from Reservoir 40.” Reservoir 40 is sourced by the EMI Aqueduct System as well. This accounts for approximately more than half of the total surface water delivered to the entire Upcountry Maui Water System.

Moreover, the water delivered to the MDWS through Wailoa Ditch is an important back-up source for the Lower Kula and Upper Kula Systems during dry periods as the Wailoa Ditch is the more reliable of the three Upcountry surface water sources. Water is pumped uphill from the Kamole-Weir WTP to the Upper and Lower Kula systems during dry periods. Therefore, these systems also depend on the EMI Aqueduct System in crucial, drought times. Please note that Section 2.1.3.1 of the Final EIS has been supplemented to include this information as shown on pages 2-19 to 2-20.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: r winn <robinwinnma@gmail.com>
Sent: Thursday, November 7, 2019 8:42 PM
To: Public Comment; ian.c.hirokawa@hawaii.gov
Subject: Follow up questions regarding East Maui Water Lease Draft-EIS
Proposed Water Lease for the Nahiku, Ke'anae, Honomano, + Huelo License Areas

Subject: Follow up questions regarding East Maui Water Lease Draft-EIS **Proposed Water**
Lease for the Nahiku, Ke'anae, Honomano, + Huelo License Areas

From: Robin Winn, 343 Waiahiwi Rd

To: Mr. Earl Matsukawa AICP, waterleaseeis@wilsonokamoto.com (808) 946-2277,
1907 S. Beretania Street, Suite 400, Honolulu, HI 96826

To: Mr. Ian Hirokawa, ian.c.hirokawa@hawaii.gov

And Suzanne Case, Chairperson, Hawai'i DLNR

151 Punchbowl Street, Honolulu, Hawai'i 96813

Makawao, Hawaii November 7, 2019

I appreciate you allowing public comment on this Draft EIS. I am resident of Makawao and I am concerned about some aspects that have not been fully thought out in the EIS.

I ask that you consider and include answers to the following questions in the final EIS regarding a 30-year water lease to a private company.

- 1.I didn't feel the DEIS was adequate in explaining how Mahi Pono farming practices were going to protect our reefs.
- 2.I found the DEIS inadequate in explaining what is going to prevent a large rainfall from taking all of this bare ground into the ocean and destroying our reefs. (I understand the A&B had a permanent crop that mitigated this issue.)

3.The DEIS did not adequately explain how the public trust of water is being protected by giving a private company a lease for 30 years.

4.I'm concerned the DEIS is not taking into consideration the right of the Hawaiian people to receive remuneration for the sale or lease of the water from state lands.

Thank you

Robin Winn

Robinwinma@gmail.com

Po box 515 Makawao, HI 96768



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September 3, 2021

Robin Winn
robinwinnma@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Robin Winn:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I appreciate you allowing public comment on this Draft EIS. I am resident of Makawao and I am concerned about some aspects that have not been fully thought out in the EIS.*

I ask that you consider and include answers to the following questions in the final EIS regarding a 30-year water lease to a private company.

Response 1: We acknowledge your comments and understand that you are a resident of Makawao. Please note that we provide you with detailed responses below to each one of your points.

Comment 2: *I didn't feel the DEIS was adequate in explaining how Mahi Pono farming practices were going to protect our reefs.*

Response 2: Please note that the Mahi Pono farm plan will follow best management practices as it relates to drainage to manage runoff from agricultural fields that are near coastal waters as explained in Section 4.2.4 of the Draft EIS. Please note that Section 4.2.4 of the EIS as shown on

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page 4-87 that the Mahi Pono farm team follows best management practices approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff associated with their current farming activities.

Comment 3: *I found the DEIS inadequate in explaining what is going to prevent a large rainfall from taking all of this bare ground into the ocean and destroying our reefs. (I understand the A&B had a permanent crop that mitigated this issue.)*

Response 3: As noted in Response #2 above, the Mahi Pono farm plan will follow best management practices as it relates to drainage to manage runoff from agricultural fields that are near coastal waters as explained in Section 4.2.4 of the Draft EIS. Please note that Section 4.2.4 of the EIS as shown on page 4-87 that the Mahi Pono farm team follows best management practices approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff associated with their current farming activities. Moreover, please note that the Central Maui agricultural fields are located within a region that receives very little rainfall annually. Hence, the need to divert surface water from East Maui. Specifically, Section 4.3.1 states, "*Central Maui's climate is typical of Leeward coastal lowlands receiving little rainfall annually, and is relatively dry. The northeast areas receive more rain than the central and southern areas of Central Maui. The average annual rainfall ranges from less than 10 inches in the southern part of the isthmus to over 40 inches in the northeastern areas.*" Hence, large storms or rainfall events that would cause large amounts of earth to drain into the ocean are not likely to occur in Central Maui.

Comment 4: *The DEIS did not adequately explain how the public trust of water is being protected by giving a private company a lease for 30 years.*

Response 4: Regarding your comment about the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

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Comment 5: *I'm concerned the DEIS is not taking into consideration the right of the Hawaiian people to receive remuneration for the sale or lease of the water from state lands.*

Response 5: Your comment about Hawaiian people receiving remuneration is unclear. However, please note the rental payments due under the Water Lease will be distributed into the State Special Land Development Fund (as is done for payments due on all the other leases and revocable permits in the State). The Office of Hawaiian Affairs (OHA) receives 20% of the revenue generated from each lease while the Department of Hawaiian Home Lands (DHHL) receives 30% of the revenue generated, as discussed in Section 4.7.3 of the EIS. However, please note that the State of Hawai'i Department of Land and Natural Resources (DLNR) administers the Fund, i.e., decides how to use the revenue generated.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Sandra Toliver <artstoliver@yahoo.com>
Sent: Thursday, October 24, 2019 7:28 PM
To: Public Comment
Subject: NO PRIVATIZATION OF WATER - THINK

Follow Up Flag: Follow up
Flag Status: Flagged

To whom it may concern, I am vehemently opposed to leasing water rights for 30 years, to a corporation, who profits from the water. Let the people of the community have the water to grow healthy food. Not only does the corporation profit, they also spray poison, which drifts in the air we breathe, runs off into the ocean we swim and fish in, and kills everything in its path. The poison they spray is known to cause cancer, allergies, cause auto-immune issues, infertility, eczema, and birth defects. Who in their right mind, would give our precious natural resources away, in exchange for being poisoned? Privatization of water is not only wrong, it is unsafe for the community, the environment and all natural resources.

Think about what you are doing for future generations. Stop putting profits over people.

Respectfully,

Sandra Toliver

808 344 5448



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10238-04
September 3, 2021

Ms. Sandra Toliver
artstoliver@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Toliver:

Thank you for comments dated October 24, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *To whom it may concern, I am vehemently opposed to leasing water rights for 30 years, to a corporation, who profits from the water.*

Response 1: We acknowledge your comments and understand that you are opposed to the Proposed Action.

Comment 2: *Let the people of the community have the water to grow healthy food. Not only does the corporation profit, they also spray poison, which drifts in the air we breathe, runs off into the ocean we swim and fish in, and kills everything in its path. The poison they spray is known to cause cancer, allergies, cause auto-immune issues, infertility, eczema, and birth defects. Who in their right mind, would give our precious natural resources away, in exchange for being poisoned? Privatization of water is not only wrong, it is unsafe for the community, the environment and all natural resources.*

Think about what you are doing for future generations. Stop putting profits over people.

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Response 2: We acknowledge your comments. Your comment about let the people of the community have the water to grow healthy food is unclear. With regards to kalo farming, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on pages 1-19 to 1-23 of the Final EIS. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamo Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area,

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including among other purposes, for restoration for lo‘i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result

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in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Your comment about poison is unclear however, we assume that you are referring to pesticide and herbicide use. As discussed in Section 4.12 pesticide use is regulated by both State and Federal law. The use of these chemicals is compliant with all laws regulating pesticide use, and certified commercial applicators are utilized as required. Act 45 which was passed by the 2018 Hawai'i Legislature and effective on January 1, 2019 required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. This report as well as any other report required by law is publicly available from the respective government entity. The State of Hawai'i DOA's Pesticide Branch also provides regulatory oversight over EMI's pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. It is also noted that since January 2020 EMI committed to discontinuing use of Round-Up. This information has been included in the Final EIS as shown on pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Letter to Ms. Sandra Toliver
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September 3, 2021

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: scott@everyactioncustom.com on behalf of Scott Crawford
<scott@everyactioncustom.com>
Sent: Wednesday, November 6, 2019 7:14 AM
To: Public Comment
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement

Dear Mr. Matsukawa,

Please accept my comments regarding Alexander and Baldwin's proposal to further divert the streams of East Maui.

I work with an organization in Kipahulu that farms wetland taro, and fortunately we draw our water from a stream that is not diverted. I have great sympathy for the struggle of the farmers of the Koolau moku who have had to fight for decades just to get a basic level of water flowing in their streams to support their traditional farming practices. I support the farmers of East Maui where the water flows, first and foremost!

- 1) I object to the inadequate period of time given to review an extremely (and unnecessarily) long document and provide meaningful comments.
- 2) Priority must be given to in-stream flow values, including traditional taro farmers, and aquatic and marine life.
- 3) Healthy flow of fresh water into the ocean is vital for healthy nearshore ecosystems. Recent restoration of flow has resulted in noticeable increase in abundance and diversity of nearshore resources. This is a very important part of the purpose of restoring stream flows that is often overlooked and not given the attention it deserves.
- 4) No long-term (or even short-term) water lease should be given without a defined and specified farm plan detailing exactly what crops are being grown where, and how much water is needed for those crops. It is wrong to ask for or approve a huge quantity of water without a clear justification for the need.
- 5) 30 years is too long, period. Things change. Plans change. Climate is changing. 30 years is too long.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Scott Crawford
PO Box 645 Hana, HI 96713-0645
scott@aloha.net



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September 3, 2021

Mr. Scott Crawford
P.O. Box 645
Hana, HI 96713
scott@aloha.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Crawford:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments regarding Alexander and Baldwin’s proposal to further divert the streams of East Maui.*

I work with an organization in Kipahulu that farms wetland taro, and fortunately we draw our water from a stream that is not diverted. I have great sympathy for the struggle of the farmers of the Koolau moku who have had to fight for decades just to get a basic level of water flowing in their streams to support their traditional farming practices. I support the farmers of East Maui where the water flows, first and foremost!

Response 1: We acknowledge your comments and understand that you work with the Kipahulu organization that grows taro. With regards to your comments about taro farming, with regards to kalo farming, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

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Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on pages 1-13 to 1-24 of the Final EIS. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a

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little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 2: *I object to the inadequate period of time given to review an extremely (and unnecessarily) long document and provide meaningful comments.*

Response 2: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 3: *Priority must be given to in-stream flow values, including traditional taro farmers, and aquatic and marine life.*

Response 3: Regarding your comment that priority must be given to in-stream flow values, please note that water can only be diverted from the subject East Maui streams after compliance with the CWRM D&O under the Proposed Action and other alternatives.

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Letter to Mr. Scott Crawford

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Regarding traditional taro farmers, as noted in Response #1 above, For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Keʻanae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on the included pages 4-288 to 4-293.

Regarding aquatic and marine life, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no

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estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have esturine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat

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flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawā and Paʻakea) have connectivity flow restoration ordered. Paʻakea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83.

Comment 4: *Healthy flow of fresh water into the ocean is vital for healthy nearshore ecosystems. Recent restoration of flow has resulted in noticeable increase in abundance and diversity of nearshore resources. This is a very important part of the purpose of restoring stream flows that is often overlooked and not given the attention it deserves.*

Response 4: Regarding your comment about healthy flow of fresh water into the ocean, please note as discussed in Response #3 above, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on the pages 4-78 to 4-83 of the Final EIS. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species (ʻOʻopu naniha (*Stenogobius hawaiiensis*), ʻOʻopu akupa (*Eleotris sandvicensis*) and ʻŌpae ʻoehaʻa (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Piʻinaʻau, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Paʻakea will have connectivity flow restoration, while ʻOʻopuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

Comment 5: *No long-term (or even short-term) water lease should be given without a defined and specified farm plan detailing exactly what crops are being grown where, and how much*

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water is needed for those crops. It is wrong to ask for or approve a huge quantity of water without a clear justification for the need.

Response 5: We acknowledge your comments. Please note that a detailed farm plan is provided in the Draft EIS. The Mahi Pono farm plan, provided in Table 2-1 of the Draft EIS lists the acreage that Mahi Pono proposes to irrigate under the Proposed Action as shown below:

Proposed Use	Acres	Gallon Per Acre a Day	Surface MGD	Ground water MGD	Total MGD	Annual MGD	% of Total
<i>Community Farm</i>	800	3,392	1.87	0.83	2.70	987	3.28%
<i>Orchards (citrus, mac nuts, beverage crops)</i>	12,850	5,089	53.39	12.04	65.43	23,883	79.48%
<i>Tropical Fruits</i>	600	4,999	2.07	0.87	2.94	1,073	3.57%
<i>Row and Annual Crops</i>	1,200	3,392	3.14	0.95	4.09	1,491	4.96%
<i>Energy Crops</i>	500	3,392	1.18	0.53	1.70	622	2.07%
<i>Pasture, irrigated</i>	4,700	1,161	4.20	1.25	5.46	1,992	6.63%
<i>Pasture, unirrigated</i>	9,100	0	0	0	0.00	0	0.00%
<i>Green Energy</i>	250	0	0	0	0.00	0	0.00%
TOTAL	30,000	2,744	65.86	16.47	82.33	30,047.77	100.00%

The Mahi Pono farm plan as shown above at full buildout provides water demands and what is proposed to be grown. However, as discussed in Section 2.1.4 of the Draft EIS that the Mahi Pono farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e., orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, which includes the DHHL water reservation.

Comment 6: *30 years is too long, period. Things change. Plans change. Climate is changing. 30 years is too long.*

Response 6: We acknowledge your comments. With regards to your comment about 30 years being too long, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability." The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The

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Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

With regards to your comment about climate change, Please note that the EIS includes the most recent information regarding climate change within its analysis. As discussed in Section 4.3.1 of the Draft EIS:

Regular trade winds are key in driving the Hawai'i's hydrological cycle, generating rainfall which helps maintain Maui's water supply. However, a recent study showed that Hawai'i's trade winds have decreased in frequency by approximately 30% over the past 37 years, from 291 days per year in 1973, to 210 days per year in 2009 (Garza et. al, 2012). The decrease in the trade winds could have serious implications for the Hawaiian Islands, including adversely

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impacting local agriculture, native ecosystems and endangered species, and the State's limited freshwater supply.

Overall, the State of Hawai'i is experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014)...

Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. Such rainfall patterns increase the amount of stormwater runoff flowing through the region, including through the streams within the License Area that reach the shoreline. The expected climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. (SE & MRC, 2019).

Hence, the EIS recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall. Moreover, Section 4.3.1 of the Final EIS has been expanded to include information from the archeological literature review and field inspection (LRFI) report (Appendix E), the Cultural Impact Assessment (CIA) report (Appendix F), and the Terrestrial Flora and Fauna Technical Report (Appendix C) prepared for this EIS as shown in pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Scott Heller <peahiboy@gmail.com>
Sent: Wednesday, November 6, 2019 5:34 PM
To: Ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Draft EIS

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas

Please accept my comments on the subject DEIS.

I am a landowner in East Maui and have DEEP CONCERN FOR THIS AREA THAT I HAVE USED FOR NEARLY 40 YEARS.

I have seen first hand the positive changes in stream health since the sugar shutdown.

An EIS needs to consider shorter term leases and in depth study of the ongoing health of the ecosystem when water is taken from the streams.

Weather changes, potential for less water in general are real concerns. I think the lease should be 5 to 10 years.

I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.

Aloha,
Scott Heller



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September 3, 2021

Mr. Scott Heller
Peahiboy@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Heller:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments on the subject DEIS.*

I am a landowner in East Maui and have DEEP CONCERN FOR THIS AREA THAT I HAVE USED FOR NEARLY 40 YEARS.

Response 1: We acknowledge your comments and understand that you are a landowner in East Maui.

Comment 2: *I have seen first hand the positive changes in stream health since the sugar shutdown.*

Response 2: We acknowledge your comments. Please note that many people at the EISPN public scoping meetings on February 22nd and 23rd, 2017 testified noting positive impacts seen from increased stream flow resulting from the cessation of sugar operations, please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See page 4-168 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. This

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is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSHEP model estimated that approximately 79.8% of total habitat units (HU) would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected under the No Action alternative.

Comment 3: *An EIS needs to consider shorter term leases and in depth study of the ongoing health of the ecosystem when water is taken from the streams.*

Response 3: We acknowledge your comments. Please note that the EIS did discuss alternative lease durations. Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that *"a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability."* The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-

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using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

With regards to your comment about an in-depth study about impacts due to stream diversions, please note that the Draft EIS analyzes each reasonable alternative on stream flow in Section 3.4.3 and Section 4.2.1 of the Draft EIS. The combination of the lower and upper bounds used for the HSHEP model in Appendix A, provide the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as by definition the changes must fall somewhere between 100% diversion and 0% diversion.

The two scenarios presented in Appendix A of the Draft EIS, the Proposed Action compliant with the CWRM D&O (Trutta Environmental Solutions' 2018 IIFS scenario) and No Action Alternative (30% remaining flow diversion) are examples of how different flow restoration scenarios result in different amounts of habitat restored. The HSHEP model is used to quantify these differences based on flow restoration changes at specific diversions.

As discussed in Section 3.4.3 of the Draft EIS, the HSHEP model requires specific diversion conditions at each diversion. Applying the model to the Reduced Water Volume alternative would require information regarding where stream flows are proposed to be increased over the Proposed Action and the amounts. Given such information, the HSHEP model is able to readily calculate the number of remaining Habitat Units (HU) in any given scenario. The appendices contained within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report (Appendix A of the EIS) provides the necessary data to form a scenario that the HSHEP model can use to analyze and quantify the changes that occur. Hence, the HSHEP model and the appendices within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report provides data that can assist decision makers understand how impacts could change across different diversions scenarios.

Comment 4: *Weather changes, potential for less water in general are real concerns. I think the lease should be 5 to 10 years.*

Response 4: We acknowledge your comments. Please note with regards to climate change that the EIS includes the most recent information regarding climate change within its analysis. As discussed in Section 4.3.1 of the Draft EIS:

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Regular trade winds are key in driving the Hawai‘i’s hydrological cycle, generating rainfall which helps maintain Maui’s water supply. However, a recent study showed that Hawai‘i’s trade winds have decreased in frequency by approximately 30% over the past 37 years, from 291 days per year in 1973, to 210 days per year in 2009 (Garza et. al, 2012). The decrease in the trade winds could have serious implications for the Hawaiian Islands, including adversely impacting local agriculture, native ecosystems and endangered species, and the State’s limited freshwater supply.

Overall, the State of Hawai‘i is experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014)...

Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. Such rainfall patterns increase the amount of stormwater runoff flowing through the region, including through the streams within the License Area that reach the shoreline. The expected climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. (SE & MRC, 2019).

Hence, the EIS recognizes that the State of Hawai‘i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall. Moreover, Section 4.3.1 of the Final EIS has been

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expanded to include information from the archeological literature review and field inspection (LRFI) report (Appendix E), the Cultural Impact Assessment (CIA) report (Appendix F), and the Terrestrial Flora and Fauna Technical Report (Appendix C) prepared for this EIS as shown in pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

With regards to a shorter lease, as noted in Response #3 above, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Comment 5: *I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.*

Response 5: We appreciate your participation in this EIS process. Please note that we have provided you with detailed responses to each of your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Dr. Jeff,Sharyn,&Kai <dreamers@maui.net>
Sent: Thursday, November 7, 2019 12:38 PM
To: Ian.c.hirokawa@hawaii.gov
Cc: Public Comment
Subject: RE: DEIS

TO: Ian Hirokawa, Earl Matsukawa

FROM: SHARYN STONE

re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'aenae, Honomanu, and Huelo License Areas

"Aloha" Mr Matsukawa and Mr Hirokawa,

Please accept my comments on the subject of DEIS for East Maui Stream Leases

I care very deeply about this proposed lease of public water because I have been a RESIDENT OF HUELO (Door of Faith Church Rd) since 1992. I know care very deeply about this proposed lease of public water because I have been a RESIDENT OF HUELO since 1992. Some of my neighbors have lived here far longer than I have, and I have heard MANY comments going something like this: 'This used to be all *green ... but since the streams have been diverted ... no more ...*'

By what rights, do you GIVE AWAY ANY of our public resources, with no respect for local residents or their needs, and with seemingly no regard for those who love the natural beauty of such streams? Who can we trust to take care of our natural (public) resources if not our own government? This is capitalism with no controls - all for short term 'profit' and the government seems to be buying into it. Where are MY personal rights when it comes to use of public resources?

The assumptions made in the current DEIS are distinctly flawed - eg it is assumed that any evaluation of impacts of long term leases should be based

upon the 100 years plus of diverted depleted stream conditions, rather than on pre-diversion conditions, or even current conditions of relatively modest 20 - 25 MGD diversion levels.

Another assumption that REALLY stuck in my craw was that only Central Maui has the substantial potential to grow useful food crops for Maui's future. By assuming this, you are assuming that all future agribusiness will be a continuation of large tracts of monoculture - a model which the rest of America is coming to realize just doesn't work for the health of the soil and the well being of surrounding residents! What I found particularly worrisome was this FICTION: "East Maui has only 44 acres potential for Kalo cultivation and 35 acres suitable for truck farming." FACT: local residents of East Maui are mostly all on 2 acre ag parcels and ALL OF US have to file an AG FARM PLAN with the State. I'm pretty sure that I have more than 18 or 19 neighbors who produce food!!! THIS STATEMENT IS DANGEROUSLY MISLEADING AND HAS ABSOLUTELY NO BASIS IN FACT!!!

If you are seriously going to consider ANY lease of our resources, then may I request that you impose conditions which involve the well being of our soil resources. We've all seen where the chemical heavy monoculture ag got us. Dusty, depleted soil. (Yet I was fascinated to read a news article about Maui Pono growing potatoes the other day - on soil that has been 'fallow' for 3 or 4 years, so was then considered 'safe' for food crops. No testing results, of course, were quoted in support this claim).

Maui is experiencing its hottest, driest summer on record. I am on a surface well. It has dried up. No rain is in sight. My neighbors are in a similar state. This well has been reliable since the 1970's. This is the first time EVER it has dried. Yet, you want to give away our water resources???? I say: please don't!

Mahalo

Sharyn Stone



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September 3, 2021

Ms. Sharyn Stone
dreamers@maui.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Stone:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *'This used to be all green ... but since the streams have been diverted ... no more ...'*

By what rights, do you GIVE AWAY ANY of our public resources, with no respect for local residents or their needs, and with seemingly no regard for those who love the natural beauty of such streams? Who can we trust to take care of our natural (public) resources if not our own government? This is capitalism with no controls - all for short term 'profit' and the government seems to be buying into it. Where are MY personal rights when it comes to use of public resources?

Response 1: We acknowledge your comments. Please note that pursuant to HRS § 171-58 the State of Hawai‘i has the authority to issue a Water Lease up to 65 years. Regarding your comment about the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B’s 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the

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BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

Comment 2: *The assumptions made in the current DEIS are distinctly flawed - eg it is assumed that any evaluation of impacts of long term leases should be based upon the 100 years plus of diverted depleted stream conditions, rather than on pre-diversion conditions, or even current conditions of relatively modest 20 - 25 MGD diversion levels.*

Response 2: Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat

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Letter to Ms. Sharyn Stone

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in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

However, we respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

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The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *Another assumption that REALLY stuck in my craw was that only Central Maui has the substantial potential to grow useful food crops for Maui's future. By assuming this, you are assuming that all future agribusiness will be a continuation of large tracts of monoculture - a model which the rest of America is coming to realize just doesn't work for the health of the soil and the well being of surrounding residents!*

Response 3: Please note that nowhere is it stated that Central Maui is the 'only' region that has the substantial potential to grow food crops. Rather as summarized in Section 4.7.4 of the Draft EIS and Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts):

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Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

The basis for this finding is given in Subsection 5 of Appendix I of the Draft EIS, along with Figures 4 to 12 in Appendix I of the Draft EIS.

Moreover, as discussed in Section 5 of Appendix I and Section 4.7.4 of the Draft EIS, the overwhelming majority of the Central Maui agricultural fields (approximately 80%) are rated by the UH Land Study Bureau (LSB) as having the highest Overall Productivity Rating of "A" (on a scale of "A" to "E" with "E" being the lowest soil rating), and a little over 11% has a "B" rating. In other words, about 27,567 acres (90.9%) are high-quality lands rated A or B. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Classification System, developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), and the College of Tropical Agriculture, University of Hawai'i. Approximately 25,669 acres of the Central Maui agricultural fields are classified under the ALISH system as "Prime", which means "agricultural land which is land that is best suited for the production of crops because of its ability to sustain high yields with relatively little input and with the least damage to the environment." Also, as discussed in Section 5.1.4 of the EIS and Section 5 of Appendix I, approximately 22,000 of the 30,000 acres of agricultural fields in Central Maui are designated as Important Agricultural Lands (IAL). Under Article XI, Section 3, of the Constitution of Hawai'i, the State is required to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. HRS Chapter, 205, § 205-41 through § 205-52, provides for the designation of IAL. As stated in HRS Chapter 205: "*The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations.*" IAL designation facilitates the long-term dedication of lands for future agricultural use so long as there is a sufficient supply of water to allow for profitable farming.

However, the EIS and the associated technical studies do not claim that only Central Maui has the substantial potential to grow useful food crops for Maui's future. As discussed in Section 2.1 of the Draft EIS, the scope of this EIS is to assess the Proposed Action which is, "...to enable the Board of Land and Natural Resources (BLNR)-awarded lessee the right, privilege and authority

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to enter and go upon State-owned lands for the purposes of developing, diverting, transporting and using government-owned waters. The requested Water Lease would allow the use of government-owned waters from the License Area (approximately 33,000 acres which includes lands within Nāhiku, Ke‘anae, Honomanū, and Huelo) through the East Maui Irrigation Company, LLC (EMI) Aqueduct System. Use of that surface water would allow the continued provision of water to enable approximately 30,000 acres of farmland in Central Maui to remain in agriculture.” Hence, the EIS assesses the action of obtaining a Water Lease and diverting water from East Maui. With regards to agriculture, under the Proposed Action, a major portion of the diverted water from East Maui would be used to irrigate the agricultural fields in Central Maui to continue to transition to diversified agriculture.

Comment 4: *What I found particularly worrisome was this FICTION: "East Maui has only 44 acres potential for Kalo cultivation and 35 acres suitable for truck farming." FACT: local residents of East Maui are mostly all on 2 acre ag parcels and ALL OF US have to file an AG FARM PLAN with the State. I'm pretty sure that I have more than 18 or 19 neighbors who produce food!!! THIS STATEMENT IS DANGEROUSLY MISLEADING AND HAS ABSOLUTELY NO BASIS IN FACT!!!*

Response 4: We respectfully disagree with your comment. Specifically, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM

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D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Comment 5: *If you are seriously going to consider ANY lease of our resources, then may I request that you impose conditions which involve the well being of our soil resources. We've all seen where the chemical heavy monoculture ag got us. Dusty, depleted soil. (Yet I was fascinated to read a news article about Maui Pono growing potatoes the other day - on soil that has been 'fallow' for 3 or 4 years, so was then considered 'safe' for food crops. No testing results, of course, were quoted in support this claim).*

Response 5: We acknowledge your comments. Please note that the terms and conditions are at the discretion of the BLNR. In response to your comments about soil resources, please note that the Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion. Once crops are planted (particularly the permanent orchard crops), ground disturbance will be a limited, resulting in a further reduction of dust and erosion. In addition, lease terms will require farm tenants to follow BMPs.

Regarding your comment about food safety, O'ahu farmers have demonstrated that food crops can be grown safely and successfully on former sugarcane lands. Regarding the potatoes grown in Central Maui, Maui News reported that they were tested by a third-party laboratory (Environmental Micro Analysis Inc.) for 400 chemicals, and that the potatoes were found to be free of pesticide residuals and safe for eating (2-8-2020). These results were reviewed by the Maui District Health Officer who confirmed that none of the hundreds of chemicals tested for were detected.

Comment 6: *Maui is experiencing its hottest, driest summer on record. I am on a surface well. It has dried up. No rain is in sight. My neighbors are in a similar state. This well has been reliable since the 1970's. This is the first time EVER it has dried. Yet, you want to give away our water resources???? I say: please don't!*

Response 6: We acknowledge your comments. However, you do not offer any specificity to where your well is located, therefore, we cannot offer you any specific comments. However, please note that Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License

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Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai'i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

Moreover, climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct

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System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on the pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Submitted Via email to:

Consultant: Mr. Earl Matsukawa AICP, 1907 S. Beretania Street, Suite 400, Honolulu, HI 96826, waterleaseeis@wilsonokamoto.com

Approving Agency: Mr. Ian Hirokawa and Suzanne Case, Chairperson, Hawai'i BLNR, 151 Punchbowl Street, Honolulu, Hawai'i 96813 ian.c.hirokawa@hawaii.gov

Submitted by:

Shay Chan Hodges, PO Box 1211, Makawao, HI 96768, shay.chanhodges@gmail.com

Re: Proposed Lease for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas; Draft Environmental Impact Statement (DEIS)

November 6, 2019

Dear Mr. Matsukawa:

I am submitting comments to you as an individual regarding the draft environmental impact statement referenced above. My primary concern relates to the alternative related to a change in ownership. Per the DEIS:

Page iv "Alternatives Considered":

"Alternatives considered but dismissed included certain water source alternatives, including use of groundwater and use of reclaimed water, as well as additional water storage. A change of ownership of the EMI Aqueduct System was similarly considered but dismissed from further study."

Page 3-4, Section 3.1.2 Aqueduct Ownership:

"During public scoping for the DEIS in 2016 and 2017, it was suggested that the EMI Aqueduct System should be brought under new ownership, without the further involvement of A&B and EMI, and potentially under public ownership. Ownership of the EMI Aqueduct System changed in January 2019 to include Mahi Pono, which intends to pursue diversified agriculture in Central Maui. Consideration of another change in ownership is too speculative at this point to warrant analysis. A change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action. ...Furthermore, the EMI Aqueduct System is not for sale, and forced acquisition of the system is projected to be prohibitively expensive, resulting in substantial costs to the public. For these reasons, this alternative is viewed as a highly speculative and unreasonable alternative, and one that would not meet the objectives of the Proposed Action. Therefore, it was dismissed from further review."

On July 19, 2019, the Maui County Board of Water Supply formed a Temporary Investigative Group (TIG) to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Water Delivery System. The TIG's Report was made public on October 16, 2019 and can be accessed at the links below. It has not yet been deliberated on by the Board of Water Supply.

<https://www.mauicounty.gov/DocumentCenter/View/119847/2019-10-17-TIG-Report>
<https://www.mauicounty.gov/DocumentCenter/View/119848/2019-10-17-TIG-Report-Appendices>

I am also attaching a PDF of the narrative report with this email.

The 283-Page TIG Report and the significant interest shown by members of the Maui County Council in it demonstrates that a change in the ownership of the EMI Aqueduct System as an alternative is not speculative.

The report further demonstrates that public ownership will enhance environmental quality and will avoid, reduce, and minimize the majority of the adverse environmental effects, costs, or risks of the Proposed Action, as addressed in the following chapters:

- **STRATEGIES FOR CREATING AND CONSERVING FRESH WATER CAPACITY**
- **NATIVE HAWAIIAN LAND & WATER RIGHTS**
- **CONSIDERATIONS RE: PURCHASING & MAINTAINING EMI SYSTEM**

The report also addresses an imminent domain acquisition, which will **not** be prohibitively expensive, and will in fact likely provide revenues for addressing the environmental and cultural issues described in the chapters outlined above. Information regarding purchase price, revenues, and expenses can be found in the following chapters:

- **CALCULATIONS FOR INITIAL PURCHASE PRICE, ESTIMATED EXPENSES, AND POTENTIAL REVENUES FOR A PUBLIC TRUST WATER SYSTEM**
- **COUNTY BIDDING ON A LONG-TERM LEASE**
- **EXAMPLE GOVERNANCE STRUCTURES**

Given that the DEIS devotes less than half a page to the ownership change alternative, while a volunteer community board produced an 85-page document with 198 pages in supporting appendices regarding the feasibility of purchasing the aqueduct for public ownership, **the draft EIS clearly has not adequately addressed this alternative, and at the very least needs to address the issues raised in the Temporary Investigative Report: *Feasibility of Purchasing and Maintaining the EMI Water Delivery System.***

Specific issues to address include, but are not limited to the initial purchase price and cost to restore the EMI Ditch System described on page 70 and 71 of the TIG report:

Initial Purchase Price	Amount	Notes
Includes 15,000 acres of land parcels and ditches utilized for the EMI system.	\$5,442,333.48 (possibly less any depreciation since 12/17/18 purchase due to neglect.)	Based on MP purchase price for full system, (only half has been paid.)
Estimated costs to restore the EMI ditch system and to correct deferred maintenance.	\$12 million over two years.	Based on 6% of Replacement Asset Value (RAV) of \$200 million, which is the modern system replacement cost cited in the EMI Draft EIS
Total Purchase Price plus substantial improvements:	\$17.4 million	Improvements from the beginning

Bond Payments:

If the EMI System is acquired by the County or State, properly structured bond financing could be utilized for acquisition and restoration of the system. Borrowing \$17.4 million at 3.75% over thirty years would require debt service payments totaling \$966,985 annually.

Value of Purchasing System Prior to Mahi Pono Obtaining a Long-Term Lease:

If Mahi Pono is able to obtain a 30-year lease, the company will likely try to argue that the EMI aqueduct system has a higher value with a long-term lease than its purchase price of \$5.4 million. There are clear indications from the December 17, 2018 purchase agreement with Alexander & Baldwin that a core component of Mahi Pono’s investment strategy is the monetization of public trust water resources as evidenced by A&B’s obligation to rebate Mahi Pono \$62 million of the purchase price if Mahi Pono does not obtain a water lease allocation of at least 30 mgd. (See sales agreement)

Another issue raised in the TIG report is the value of the water requested in the lease application. The figures shown on page 72 of the TIG report need to be addressed:

According to the Draft EIS, Page 2-18:

The Mahi Pono farm plan assumes the following: The total surface water available for use after system losses is estimated to be approximately 65.88 mgd.

Based on maximum delivery of water and current agricultural and domestic water rates charged to Maui County farmers and residents, the highest potential annual agricultural revenue that can be derived from the 65.88 mgd is:

Convert 65.88 mgd to kgal (1,000 gallons)	Convert to kgal per year (365 days)	If water were delivered at current agricultural rates (\$1.10 per 1,000 gallons)
65,880 kgal	24,046,200 kgal per year	\$26,450,820

And finally, the EIS needs to address the issues raised under “Recommendations and Conclusion” on Page 81:

Based on all the information available to the TIG at this time, the Temporary Investigative Group is convinced that in order to protect the public’s health, safety, and well-being in the short- and long-terms, actions need to be taken immediately to utilize legal and financial vehicles to secure the public’s control of the EMI Water Delivery System.

A. County Application for a Long-Term Lease:

Maui County should immediately apply for a long-term (Water Lease) for the Nāhiku, Ke’anae, Honomanū, and Huelo License Areas, situated at TMK Nos. (2) 1-2- 004:005, 007 (por.), 1-1-002:002, 1-1-001:044, 1-1-001:050, 2-9-014:001, 005, 011, 012, 017 in the Makawao and Hana Districts, on the island of Maui.

The above action would be valuable on its own, in terms of supporting the next step, as well as working in tandem with “Recommended Near-Term Actions” below.

B. Re-negotiate Current Contracts with EMI/Mahi Pono

Maui County should immediately re-negotiate a new contract with EMI/Mahi Pono that does not require that EMI/Mahi Pono obtain a Revocable Permit or Lease in order for the Kamole Treatment Plant to access Wailoa Ditch waters. This lease could also include requirements that address the various issues raised in this document from repair and maintenance of the system to native Hawaiian stream rights to investment in watershed protection and addressing liability issues.

By applying for a long-term lease, the County would be better positioned to re-negotiate the contract with EMI/Mahi Pono. Excluding corporation counsel personnel costs, this option would be relatively straightforward and would not be cost prohibitive. (See current Lease Appendix 13.)

However, this option would require enforcement on the part of the County, which would only be realistic if the County were willing to fully utilize its powers and responsibilities to protect the public interest. Furthermore, long-term solutions are needed to ensure the well-being of Maui residents.

4. Recommended Near-Term Actions:

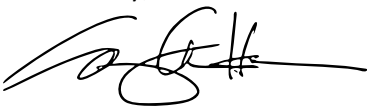
As outlined under "Governance Structures" and described in more detail previously, because the financial incentive structure of a private equity-controlled water delivery system is misaligned with the long-term public interest, it would be imprudent to assume that the "Primary" and "Other Considerations" described above [on Page 80] will be addressed by Mahi Pono.

Therefore, the TIG recommends that the County of Maui exercise its powers of eminent domain as soon as possible to begin the process of supporting acquisition of the system.

Furthermore, if the County of Maui is interested in facilitating community control of the EMI Aqueduct system and meeting the multiple needs of stakeholders, acquiring the system at a price close to the \$5.4 million paid by Mahi Pono in December 2018 is essential. As noted previously, if Mahi Pono obtains a 30-year water lease, the private equity fund will likely argue that the EMI aqueduct system has a value higher than the original purchase price. (Mahi Pono's sales agreement with A&B states that the water lease is worth a minimum of \$62 million.) Acquiring the system in the near term will thus increase the chances of minimizing long-term debt.

Thank you for your attention to this matter. I look forward to seeing the issues raised in the Board of Water Supply's Temporary Investigative Group Report integrated into the final Environmental Impact Statement.

Sincerely,



Shay Chan Hodges

Board of Water Supply

Temporary Investigative Group

October 17, 2019

Feasibility of Purchasing and Maintaining the EMI Water Delivery System

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NOTES ON DOCUMENT:

MUCH OF THIS DOCUMENT CONSISTS OF EXCERPTS FROM OTHER DOCUMENTS, WHETHER THE MAUI ISLAND DRAFT WATER USE AND DEVELOPMENT PLAN OR THE DRAFT EIS CREATED BY ALEXANDER & BALDWIN AND EAST MAUI IRRIGATION OR VARIOUS LEGAL DOCUMENTS RELATED TO OWNERSHIP OF THE WATER SYSTEM AND RELEVANT LANDS.

ALL DOCUMENTS ARE INCLUDED AS A REFERENCE FOR WHAT HAS BEEN SAID ABOUT THE SYSTEM, MAUI RESIDENTS' NEEDS, AND THE LEGAL ENVIRONMENT. INCLUSION IN THIS REPORT DOES NOT IMPLY THAT THE TEMPORARY INVESTIGATIVE GROUP HAS IN ANY WAY CONFIRMED THE VERACITY OF ANY DOCUMENTS OR CLAIMS.

WE HAVE MADE EVERY ATTEMPT TO INCLUDE INTERNET LINKS TO THE ORIGINAL DOCUMENTS AND/OR ATTACHMENTS AS APPENDICES, AND TO MAKE THE SOURCES OF TEXTS CLEAR. WE HOPE THAT THE READER WILL USE THIS DOCUMENT AS A STARTING POINT FOR FURTHER RESEARCH.

PLEASE ALSO NOTE THAT SOME GRAMMATICAL ERRORS, MISSPELLINGS, AND INCONSISTENCY IN SPELLINGS OF HAWAIIAN PLACE NAMES ARE PART OF THE ORIGINAL DOCUMENTS, AND THEREFORE HAVE NOT BEEN CORRECTED.

I. TIG Investigation Background:

Stated Purpose of the Investigation:

Explore the Feasibility of Purchasing and Maintaining the EMI Water Delivery System and Examine Other Alternatives for Ensuring That The People of Maui County Have Authority Over the Delivery of Water, Which is A Public Trust

Attempts to Access Information on Behalf of the Public:

Over the last several months the Maui County Board of Water Supply (BWS) has had several discussions regarding the role of Mahi Pono in the community. In a letter approved unanimously by the Board on September 19, 2019 to be sent to Mahi Pono Operations Manager Grant Nakama, contingent upon approval by Mayor Michael Victorino, the BWS stated the following:

...the [Maui County] Board [of Water Supply] has been extending invitations for Mahi Pono, LLC to attend one of our board meetings since March. We are very eager to have a continued dialog between the Board and Mahi Pono as we continually get testimony submissions and questions from the Maui community on water and land use subjects that are beyond our purview. A dialog between the Board and Mahi Pono can help mitigate any falsely placed frustrations throughout the community that are generated from the perceived lack of transparency from the Board when we don't have the answers to provide them.

As a Board that is dedicated to addressing matters related to safeguarding Maui residents' access to water, we are very interested in developing a clear vision of the island's total water resources and current and future demand. To that end, the Board has recently reached out to all private water purveyors and extended invitations to meetings. These invitations have been extended in order to gain an inclusive picture of the island water resources and delivery options as well as to see if there are untapped opportunities for County and private water purveyors to support one another.

Based on statements made in your July 1 letter and discussions during recent meetings, the Board would still welcome your attendance at our next meeting. If that cannot be arranged, we would like to extend some follow-up questions regarding Mahi Pono's current and future plans as they relate to water use. Having some answers to these questions that we pose here will help us to communicate with the wider Maui community that has been addressing the Board. For example: In your July 1 letter, you state: **"We have always been committed to supplying the County of Maui – and by**

extension, the Upcountry Maui community – with water from the EMI system. Having said that, our ability to supply water is 100% dependent on our right to legally access and deliver water.” You further state, “That said, if a [Revocable Permit] is successfully obtained – whether by A&B, EMI or by Mahi Pono – then the County will continue to receive water for the Upcountry Maui community.” We appreciate the clarity of this statement but the follow up to this is what will happen if Mahi Pono does not obtain a Revocable Permit to divert water?

“We would greatly appreciate any clarity that Mahi Pono can provide on this list of questions that has been generated by or presented to the Board:

- **If Mahi Pono does not obtain a Revocable Permit, will Mahi Pono be able to still commit to working with the County of Maui to ensure affordable access to water for upcountry Maui residents?**
- **Since the water that flows from the Wailoa Ditch to the Kamole Treatment Plant is maintained by Mahi Pono and EMI, would the lack of a Revocable Permit cease that ditch maintenance and flow?**
- Is Mahi Pono interested in exploring an agreement to provide water that is harvested from its own lands to the County’s Kamole Water Treatment plant?
- Is Mahi Pono willing to consider shared management of the Wailoa Ditch and other ditch systems? The current condition of the ditch system and the cost of maintenance/repairs that are needed would help clarify the monetary constraints of providing water to the Kamole Water Treatment plant, and
- If the water leases are obtained by EMI, what portion would go to Mahi Pono lands and what portion would go to remaining A&B lands, many of which are entitled for development? Are there other agreements besides the original sales agreement between Mahi Pono and A&B?”

(Bold added for emphasis, July 1, 2019 Grant Nakama letter and BWS draft letter attached, Appendices 1 and 2)

As noted in the letter, the Board of Water Supply has been reaching out to Mahi Pono since March, 2019. The only communication received from Mahi Pono was the letter referred to above from Mr. Nakama to Director Jeff Pearson, which Mr. Pearson has stated was intended to be shared with the BWS.

As a result of growing concerns about communication and transparency, a Temporary Investigative Group (TIG) to explore options for ensuring access to water was approved on July 18, 2019, including the following TIG members:

- Board Member Norman Franco
- Board Chair Shay Chan Hodges
- Board Member Toni Eaton
- Board Member Joseph Aquino

Norman Franco was approved to be Chair of the TIG, Shay Chan Hodges was approved to be Vice Chair.

On July 23, 2019, Joseph Aquino resigned from the TIG due to work responsibilities.

Scope of investigation:

As approved on July 18, 2019, during its investigation, the temporary investigative group (TIG) may:

- a. Conduct interviews and discussions with County of Maui personnel related to the delivery of water to Upcountry and Central Maui.
- b. Conduct interviews and discussions with State of Hawaii personnel related to the delivery of water to Upcountry and Central Maui.
- c. Conduct interviews and discussions with anyone whom the TIG determines has the knowledge, expertise and experience necessary to assist TIG members in increasing their understanding of the scope, operations and maintenance of the EMI Water Delivery System as well as the costs related to the purchase or condemnation of the EMI water delivery system and the cost of its maintenance, including, if necessary, the purchase or condemnation of relevant Mahi Pono lands.
- d. Conduct interviews and discussions with anyone whom the TIG determines has the knowledge, expertise and experience necessary to assist TIG members in increasing their understanding of potential financial mechanisms and organizational structures necessary for the acquisition and governance of the EMI Water Delivery System, in order to promote system sustainability, ensure fiscal integrity, maximize the public welfare and maintain the public trust.
- e. Consult with representatives and stakeholders with diverse expertise relating to the TIG investigation.
- f. Review documents, contracts, studies and other written information relevant to the investigation.

Urgency of Investigation:

Mahi Pono's Intentions per the Draft EIS

On September 23, 2019, the East Maui Irrigation System (EMI) and Alexander & Baldwin (A&B) Draft Environmental Impact Statement (DEIS) for the *Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas*¹, situated at TMK Nos. (2) 1-2- 004:005, 007 (por.), 1-1-002:002, 1-1-001:044, 1-1-001:050, 2-9-014:001, 005, 011, 012, 017 in the *Makawao and Hana Districts, on the island of Maui* was posted by the Hawaii Department of Health Office of Environmental Quality Control (OEQC) in its bulletin and on its website.

The 2,700 page Draft Environmental Impact Statement provides some information regarding Mahi Pono's costs and plans, and is available online (see footnote). It is referenced throughout this report as "DEIS" with accompanying page numbers.

This document answers some of the questions posed by the Board. For example:

"Without the Water Lease, even if EMI could find it economically feasible to continue maintaining the EMI Aqueduct System to divert non-governmental water for diversified agriculture in Central Maui, **there may not be enough water to allocate much or any to the MDWS.** This lack of water would exacerbate the effects of drought when other surface water sources are unreliable for the KAP and the Nāhiku, this could eliminate their primary source of water. **Insufficient water delivered to the County through the EMI Aqueduct System could have significant effects on health and safety of those who currently rely on that water delivery.**"

(Bold added for emphasis, DEIS, Page xiii, *Relationship Between Local Short-term Uses of Humanity's Environment and the Maintenance and Enhancement of Long-Term Productivity*)

"The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore **if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate.** Under the Reduced Water Volume alternative, depending on the amount of water authorized under the Water Lease, the MDWS may receive no water from the Wailoa Ditch or some amount up to 7.1 mgd². **The greater the reduction in the amount authorized under the Water Lease, proportionally less water will be available to the MDWS.**"

(Bold added for emphasis, DEIS, Page 3-5, *3.2 Alternative Analysis 3.2.1 Reduced Water Volume Alternative*)

¹ http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2019-09-23-MA-DEIS-East-Maui-Water-Lease.pdf

² "mgd" = million gallons per day

The following table from the Draft EIS, Page 1945, T-1, shows how Mahi Pono intends to allocate water from the EMI Aqueduct under various scenarios, including “no lease,” along with other water sources.

Table 1. Water Supply, Allocation, and Costs

Item	Multiplier or Source	Baselines			Alternative Future Water Leases		Units
		Typical Sugar	Recent Sugar	Post Sugar	Limited to D&O	No Lease	
1.a. SURFACE AND BRACKISH WATER SUPPLY							
Surface water from the EMI System							
East of Honopou Stream							
State lands	70%	n.e.	n.e.	n.e.	61.57	-	mgd
Private lands	30%	n.e.	n.e.	n.e.	26.39	26.39	mgd
Total, east of Honopou Stream		n.e.	n.e.	23.99	87.95	26.39	mgd
Honopou Stream to Maliko Gulch, private lands	D&O & A&A	n.e.	n.e.	4.37	4.37	4.37	mgd
Total surface water supply	A&B or D&O	156.54	113.71	28.36	92.32	30.76	mgd
Brackish groundwater	A&B, D&O, or PEP	42.50	69.90	-	21.31	7.69	mgd
Total water supply		199.04	183.61	28.36	113.63	38.44	mgd
Reduction in supply of surface water							
From typical sugar flow of 156.69 mgd		-	42.83	n.e.	64.22	125.79	mgd
From recent sugar flow of 113.71 mgd			-	n.e.	21.39	82.96	mgd
1.b. WATER ALLOCATION							
MDWS, surface water from EMI	D&O	3.23	7.10	2.86	7.10	-	mgd
Ag and related uses							
Sugarcane	D&O	143.19	132.45				mgd
Pineapple	HC&S	0.25					mgd
HC&S, industrial activities	D&O	7.98	6.25	1.00			mgd
Diversified Ag	A&B or Total less losses			4.00	82.34	29.72	mgd
Maintenance of reservoirs for fire protection	D&O			n.e.			mgd
Other	D&O		0.41				mgd
System losses (excludes water for pineapple)	22.7% losses or D&O	44.39	41.67	n.e.	24.18	8.73	mgd
Total Ag uses	Supply less MDWS	195.81	180.78	n.e.	106.53	38.44	mgd
System losses, Ag use and system losses		22.7%	23.05%	n.e.	22.7%	22.7%	
Ag Uses, after system losses (excluding pineapple)							
Irrigation Use	Residual	143.19	132.45	n.e.	82.34	29.72	mgd
Non-irrigation Use	Above	7.98	6.66	n.e.	-	-	mgd
Total Ag uses, after system losses		151.17	139.11	n.e.	82.34	29.72	mgd
Split							
Irrigation use		94.72%	95.21%	n.e.	100.0%	100.0%	
Non-irrigation use		5.28%	4.79%	n.e.	0.0%	0.0%	
Irrigation use, after system losses							
Surface water	Residual	112.07	81.24	n.e.	65.88	23.77	mgd
Brackish groundwater	Groundwater – % loss x % irrigation use	31.12	51.21	n.e.	16.47	5.94	mgd
Total Ag use (excluding pineapple)	from above	143.19	132.45	4.00	82.34	29.72	mgd
Split							
Surface water		78.3%	61.3%	n.e.	80.0%	80.0%	
Brackish groundwater		21.7%	38.7%	n.e.	20.0%	20.0%	
Adjustment			(4.27)				mgd
Total water use		199.04	183.61	n.e.	113.63	38.44	mgd
1.c. WATER DELIVERY COSTS							
Surface water from EMI	MHI	3.5	3.9	16.2	6.8	12.9	¢/1,000 gal
Brackish groundwater	A&B/EMI	n.e.	52.0	52.0	52.0	52.0	¢/1,000 gal

The DEIS describes the ownership relationship of EMI, Mahi Pono, and A&B in this way:

“the EMI Aqueduct System is owned and operated by the EMI. EMI was previously a wholly owned subsidiary of A&B. In February, 2019, MP EMI, LLC, became a co-owner of EMI. In addition to becoming the co-owner of the EMI Aqueduct System, as noted above, Mahi Pono acquired former sugarcane and watershed lands, including the Central Maui agricultural fields, from A&B in December 2018. Agricultural operations are centralized under Mahi Pono, LLC.” (DEIS, Page 1-2, *The EMI Aqueduct System.*)

BWS TIG Obligations to the Public

The Board of Water Supply approved convening a “Temporary Investigative Group” to examine Alternatives for Ensuring That The People of Maui County Have Authority Over the Delivery of Water, Which is A Public Trust” in July, 2019.

According to the Draft Environmental Impact Statement that was completed as a necessary step in Mahi Pono’s application for a 30-year lease:

***“if no Water Lease is issued, it is assumed that the delivery of water to the [Maui Department of Water Supply] would terminate,” and given that -- as stated in the DEIS -- “insufficient water delivered to the County through the EMI Aqueduct System could have significant effects on health and safety of those who currently rely on that water delivery.*”**

On October 11, 2019, contrary to recommendations by its staff, the Board of Land and Natural Resources unanimously approved a one-year permit allowing Alexander & Baldwin to continue to divert water from East Maui streams on state lands in 2020 – an increased draw by 10 million gallons per day. Of the 45 mgd³ approved, 5 mgd would supply state projects and the County Department of Water Supply⁴.

Because Mahi Pono has not committed to working with the County of Maui to ensure affordable access to water for Upcountry Maui residents if a revocable permit or lease is not approved and given that the public trust continues to be tethered to legal decisions made regarding EMI, A&B, and Mahi Pono, TIG members believe that it is a public health imperative for the County Council and Mayor to explore all facets for self-determination with regard to access to water as soon as possible.

³ mgd” = million gallons per day

⁴ Maui News, State board OKs more water for Mahi Pono, October 12, 2019, <https://www.mauinews.com/news/local-news/2019/10/state-board-oks-more-water-for-mahi-pono/>

II. How the EMI System Impacts East Maui & Upcountry Maui:

Description of the EMI System Per the Draft Environmental Impact Statement:

The EMI Aqueduct System was constructed in phases, beginning in the 1870s and extending to its completion, as it currently stands, in 1923. It consists of approximately 388 separate intakes, 24 miles of ditches, and 50 miles of tunnels, as well as numerous small dams, intakes, pipes, 13 inverted siphons and flumes. **The EMI Aqueduct System collects surface stream water from approximately 50,000 acres of land (Collection Area), of which approximately 33,000 acres are owned by the State of Hawaii (which includes lands within Nāhiku, Keʻanae, Honomanū and Huelo) (License Area)⁵, and the remaining approximately 17,000 acres which are privately owned by EMI and Mahi Pono.⁶**

The EMI Aqueduct system starts at Makapipi Stream, in the Nahiku portion of the License Area, with the Koolau Ditch. The Koolau Ditch traverses westward across the Keʻanae License Area and into the Honomanū License Area where it crosses paths with the Spreckles Ditch. This is where streams had multiple diversions at different levels to supply water to the EMI Aqueduct System. Separating higher elevation ditches allows them to maintain the very slight slope necessary to convey flows by gravity over long distances to irrigate higher elevation fields. This avoids the cost of energy required to pump water up from ditches delivering water at lower elevations. As the system continues westward, the Koolau Ditch transitions at the boundary between the Honomanū and Huelo portions of the License Area to the Wailoa Ditch. Makai of the Koolau/Wailoa Ditch, are the Manuel Luis and the Center Ditch. At Waikamoi Stream, the New Hamakua Ditch begins, running parallel to the Wailoa Ditch, but at a lower elevation.⁷

The Spreckles Ditch terminates its mauka segment at Waikamoi Stream, and begins its makai segment at Kaʻaiea Stream, until it converges with the Lowrie Ditch at Niliʻilihaele Stream. Makai of Lowrie Ditch is the Haiku Ditch. At Honopou Stream, the water collected within the License Area by the EMI Aqueduct System exits the License Area. Crossing this western boundary of the License Area in descending elevation are the Wailoa Ditch, the New Ditch, the Lowrie Ditch, and the Haiku Ditch. West of Honopou Stream, the EMI Aqueduct System traverses land that was largely owned by A&B and is now largely owned by Mahi Pono. Additional flows from streams located on this land are diverted by the EMI Aqueduct System until it crosses Maliko Gulch beyond which there are no stream diversions. Crossing Maliko Gulch in descending elevation are the Wailoa Ditch, Kauhikoa Ditch, Lowrie Ditch, and the Haiku Ditch.⁸

⁵ DEIS, Page 1-2

⁶ DEIS, Page 2-4

⁷ DEIS, Page 2-4

⁸ DEIS, Page 2-4

Current Diversion by the EMI Delivery System As Stated in the Draft EIS:

Currently, the EMI Aqueduct System is only diverting approximately 20 mgd⁹. As a result, very little surface stream water is currently being diverted relative to what would be allowed should the Water Lease be awarded per the Proposed Action. However, the amount of water that may be diverted should the Water Lease be issued is substantially less than the amount that was diverted during normal sugar production. For example, in 2006 it is estimated that the EMI Aqueduct System delivered approximately 156.69 mgd at Maliko Gulch, whereas under the CWRM¹⁰ D&O¹¹, it is estimated that the delivery at Maliko Gulch will be approximately 92.32 mgd (Akinaka, 2019).¹²

Examples of Community Concerns as Relayed at Focus Group Per DEIS:

Excerpts from the DEIS, 4.7.2 Social Characteristics (Page 4-135):

A focus group with residents and farmers from Huelo and Ha`ikū was convened on November 15, 2018 at Hale Akua in Huelo. Most of these participants live in the Huelo watershed area and many live and farm in areas adjacent to streams that are subject to the CWRM's and D&O.

Also, participants said that EMI personnel do not notify residents in the area when the gates open to allow downstream flow. The sudden onrush of stream water has endangered several people who happened to be in/near the stream at that time.

It was noted that, with the closing of the sugar plantation, the low level of maintenance has deteriorated even further given the reduction of EMI staffing to, reportedly, about eight people.

A second major concern with this group is fairness in how they, as a community, have been treated in two ways. First, they reported of the 25 streams in the petition before the CWRM, only three streams in the Huelo watershed were considered kalo streams and designated for full flow. While they agreed with such designation in other watersheds, they felt more streams in their area should have been considered.

Another fairness related concern raised by the group is that residents and farmers in Huelo and streams. Except for those whose properties have deeds allowing stream water access via pipes, most cannot access stream water. They cannot use the water for agriculture or domestic uses. Participants noted that they are off the electricity grid, and they are very interested in using stream flow for hydroelectricity. It was reported that there have been drought times in which residents had to truck in water even though they live next to streams. It was also said that those who were fortunate to have wells on their property share their water with neighbors during these times.

⁹ mgd" = million gallons per day

¹⁰ CWRM=Hawaii State Commission on Water Resource Management

¹¹ D&O=Decision and Order

¹² DEIS, Page 2-8

An issue often raised in the November 2018 focus group sessions was the reportedly poor condition of the EMI Aqueduct System. Interviewees also discussed this topic from the perspective of reducing water losses. They said that the reduction of water losses would reduce the amount of water required for agricultural operations.

These interviewees wanted to know how Mahi Pono will ensure that continued use of the EMI Aqueduct System will be monitored and operated for efficient use of water, which is valued as a public trust, an integral environmental resource, and essential for healthy ecosystems.

Interviewees pointed out that, even though the CWRM D&O restored several streams in East Maui, the social and cultural effects of historical and significant stream diversions have yet to be rectified. This belief was reiterated several times in the November 2018 focus groups and expressed by those interviewed.

While there has been interaction between Mahi Pono and East Maui residents, there still needs to be acknowledgement of past wrongs and a “path to healing” that will allow residents and the new landowner to have a constructive relationship.

Those interviewed understood that Mahi Pono is not responsible for whatever occurred during A&B’s tenure. Mahi Pono inherited a legacy that developed for over one hundred years. Nevertheless, to move forward as an integral part of the Maui community, Mahi Pono needs to “make pono” with East Maui so that everyone can move forward. One person said, “There needs to be apology, repentance and reparation.”

Description of EMI System Per Dept of Water Supply Draft Water Use & Development Plan for Ko`olau and Central Sectors:

Excerpted from the Maui Island Water Use And Development Plan Draft, Part III Regional Plans, Ko`olau Aquifer Sector Area (ASEA)¹³:

Transport of Stream Water from East Maui

The EMI collects surface water from the [Ko`olau] sector and delivers it to Hawaiian Commercial & Sugar’s (HC&S) Central Maui cane fields. Some of the water is also used to generate electrical power. **A relatively small amount of water is used for residential and agricultural use by the DWS for its Upcountry Maui Water Systems, which include the Upper Kula and Lower Kula Water Systems.** The EMI ditch system, which began construction in 1876, is the nation’s largest privately built and operated water system; it consists of approximately seventy-five (75) miles of ditches, tunnels, siphons, flumes, and reservoirs. The Ko`olau Department of Agriculture’s AWUDP (2004) listed the average delivery at 165 mgd with a delivery capacity of 435 mgd¹⁴.

¹³ <https://waterresources.mauicounty.gov/DocumentCenter/View/223/Draft-Plan-Section-III-Chapter-17-PDF?bidId=>

¹⁴ Ko`olau WUDP, Page 22

Wailoa Ditch	195 mgd
New Hamakua Ditch	100 mgd
Lowrie Ditch	70 mgd
Ha`ikū Ditch	70 mgd
Total Capacity	435 mgd

In drought conditions, both the Lower and Upper Kula systems require supplemental surface water from Kamole Weir and groundwater pumped up to 4,000 feet. Under current agreement with EMI, MDWS receives 12 mgd from the Wailoa Ditch with an option for an additional 4 mgd. During periods of low flow, MDWS will receive a minimum allotment of 8.2 mgd with HC&S also receiving 8.2 mgd, or prorated shares if less water is available. Proposed amended IIFS could restrict Wailoa ditch off stream uses so that less than 7 mgd is available a few days a year. When more than 7 mgd is available under non-drought conditions, the proposed restored amount would come from EMI’s share of the 16.4 mgd. The 2017 Proposal and the current allocation between MDWS and EMI would allow sufficient ditch use for MDWS to meet current demand on the Upcountry system. Under normal flow, exceeding 16 mgd at Wailoa Ditch, and under an allocation of up to 12 mgd for MDWS, projected future demand of 16.4 mgd could also be met. Treatment of more than 6 mgd at the Kamole Weir will require expansion of the water treatment facility and storage construction. Future demand on the Upcountry system as a whole is addressed in the Central aquifer sector report.¹⁵

Water Use Maui Department of Water Supply Upcountry System

MDWS relies on three surface water sources, one of which is delivered by EMI through the Wailoa Ditch, and the other two through two MDWS higher elevation aqueducts maintained by EMI that transport water to Olinda and Kula, under a contractual agreement originated under the 1973 East Maui Water Agreement and subsequent agreements. MDWS and EMI diverts water from Ko`olau ASEA, conveyed to treatment plant facilities located in Ko`olau ASEA (Piiholo Water Treatment Facility) and the Central ASEA (Olinda and Kamole Weir Water Treatment Facilities)¹⁶.

Water Treatment Facility	Elevation	Conveyance System	Production Capacity	Average Production
Olinda	4,200 feet	Upper Kula Flume	2.0 mgd	1.6 mgd
Piiholo	2,900 feet	Lower Kula Flume	5.0 mgd	2.5 mgd
Kamole-Weir	1,120 feet	Wailoa Ditch	6.0 mgd	3.6 mgd

¹⁵ Ko`olau WUDP, Page 123

¹⁶ Ko`olau WUDP, Page 119

Excerpted from Department of Water Supply Fiscal Year 2018 Annual Report:¹⁷

- **Piiholo Water Treatment Plant:** Water produced during FY18: 1,197,415,000 gallons.
- Daily average: **3.28 MGD**
- **Kamole Water Treatment Plant:** Water produced during FY18: 449,530,000 gallons. Daily average: **1.50 MGD**
- **Olinda Water Treatment Plant:** Water produced during FY18: 484,370,000 gallons. Daily average: **1.33 million gallons per day (MGD).**

Excerpted from the Maui Island Water Use And Development Plan Draft, Part III Regional Plans, Central Aquifer Sector Area (ASEA):¹⁸

The Olinda facility diverts water at the upper Waikamoi Flume from the Waikamoi, Puohokamoa, and Haipuena Streams. Water is stored in two 15 million gallon reservoirs and one 100-million gallon reservoir. The Piiholo facility diverts water from the Waikamoi, Puohokamoa, Haipuena Streams and Honomanu streams into a 50-million gallon reservoir. The Kamole-Weir facility relies on EMI diversions from eastern most Makapipi stream to the western most Honopou stream.

The Upcountry system spans Ko`olau and Central aquifer sectors, ...and serves about 35,200 people. MDWS also serves non potable water to 31 farm lots at the Kula Agricultural Park (KAP). Current water use at the KAP is about 0.4 mgd. About 80 – 90 percent of the delivered water comes from surface water sources and the remaining portion from basal aquifer wells. Haiku Well and Kaupakalua Well are located in the Ko`olau ASEA, Hamakuapoko Well 1 & 2 and Po`okela Well are located in the Central ASEA. The combined surface and groundwater source production capacity is 17.9 mgd, 13 mgd from surface water and 4.9 mgd from groundwater. Accounting for system and operational limitations, and use restrictions from Hamakuapoko wells, the reliable capacity is 9.1 mgd. Current water use averages 7.9 mgd within a range of 6 – 10 mgd.

The DOH¹⁹ divides the MDWS Upcountry System into three separate systems: Upper Kula; Lower Kula and the Makawao systems, although all three are interconnected.

MDWS Makawao/Upcountry Water System (PWS 213)

The MDWS Makawao/Upcountry System, also referred to as Makawao District by the DOH, generally serves the area extending from Ha`iku, Makawao, and Pukalani to Hali`imaile/Pa`ia. The system has 6,680 meters and serves about 28,702 people. The sources of water are primarily from surface water imported from East Maui (80%) and well water (20%) from the Haiku and Makawao aquifers. Surface water from the Wailoa Ditch, generated in the Ko`olau ASEA, is

¹⁷ <https://www.mauicounty.gov/DocumentCenter/View/115629/DWS-FY18-Annual-Report>

¹⁸ <https://waterresources.mauicounty.gov/DocumentCenter/View/221/Draft-Plan-Section-III-Chapter-15-PDF?bidId=>, Page 45, 46

¹⁹ DOH=Department of Health

treated at the Kamole Water Treatment Facility (WTF). The facility uses micro-filtration technology and is the largest surface water treatment facility on Maui. It has four booster pumps to move water up to the 2,800 foot elevation, where it can be pumped to the highest service areas at 4,500 feet. Historically, the Kamole WTF is the primary source of water for nearly all of Upcountry during times of drought. There is no raw water storage at the WTF.

MDWS Lower Kula/Upcountry Water System [PWS 247]

The MDWS Lower Kula/Upcountry System, also referred to as Lower Kula District by the DOH, generally serves the area extending from Kula Kai to Omaopio to mid and lower Kimo Drive areas. The system has 1,064 meters and serves about 3,192 people. The sources of water are primarily from surface water imported from East Maui treated at the Piʻiholo WTF. The facility uses direct filtration technology. Granular activated carbon and air stripping treatments were added in 2015 to reduce disinfection-byproducts in the water supply. The system can be supplemented with groundwater from Makawao aquifer.

MDWS Upper Kula/Upcountry Water System [PWS 215]

The MDWS Upper Kula/Upcountry System, also referred to as Upper Kula District by the DOH, generally serves the area extending from Upper Kula to Kula Highlands to Kama`ole to Upper Olinda-Piʻiholo to Kula Glen to Ulupalakua-Kanaio. The system has 2,346 meters and serves about 7,038 people. The source of water is primarily from surface water from Waikamoi treated at the Olinda WTF. The facility uses micro-filtration technology. Disinfection is provided by anhydrous ammonia, blended with chlorine to form chloramines. Water is stored in 30 MG²⁰ Waikamoi Reservoirs and the 100 MG Kahakapao Reservoirs.

Future Water Use MDWS Upcountry System

Based on growth rates and the socio-economic forecast referenced in the Maui Island Plan, the population Upcountry is projected to grow by about 8,424 to a total of about 43,675 people by 2030. Projected water demand for the base, low and high growth scenarios are shown below.

Water losses due to leaks, seepage, evaporation and other inefficiencies in the treatment, conveyance, distribution and storage of water range widely depending on storage and source transmission system age, length, type and many other factors. To account for water losses and determine source needs for Upcountry, water produced, rather than water billed is used as basis to determine source needs. For the Upcountry system, water losses average 20%.²¹

²⁰ MG=million gallons

²¹ Koʻolau WUDP, Page 121

	2014	2035 Base	2035 High	2035 Low
Consumption	6.26	7.02	7.57	6.42
Production	7.61	8.53	9.20	7.80

Table 16-56 Projected Consumption and Production MDWS Upcountry District System, Base, High and Low Scenarios (mgd) *Excludes Kula Ag Park

Upcountry Meter List²²

In 1993, the MDWS determined that the existing Upcountry water system was found to have insufficient water supply developed for fire protection, domestic and irrigation purposes to add new or additional water services without detriment to those already served.

MDWS created a list of Upcountry properties, by date of application, who requested new and additional water service. In 2002, an administrative rule "Water Meter Issuance Rule for the Upcountry Water System", Title 16, Chapter 106 was created. The rule outlined the procedure for processing applications for water service. New applicants were continually added to the list until provisions were codified in 2013 so that no new applications were accepted after the 2013 provisions became effective. A 2015 ordinance provided certain fire protection exemptions. Still, about half of meter offers are declined presumably due to the expense of required system improvements. The Priority List is estimated to represent an additional 3.7 – 7.3 mgd demand on the Upcountry system as a whole. There are about 1,800 requests for 4,300 meters (excluding those that did not accept a reservation offered, accepted a reservation, or where a meter was installed) for 1,900 dwelling units and a nominal number of commercial units. About two-thirds of the remaining requests are located outside designated growth areas. There remains uncertainty over the number and timing of new meters as well as occupancy.

Sources for requests in Haiku are primarily served by basal wells with sufficient backup capacity to reliably add new services. Sources for requests on the Lower and Upper Kula subsystems are East Maui streams in the Waikamoi area that are subject to Instream Flow Standards and vulnerable to drought. Groundwater from Po`okela Well in Makawao aquifer can supplement the Lower and Upper Kula subsystems. There remains uncertainty over the number and timing of new meters as well as occupancy.

Providing reliable capacity to satisfy the Priority List could be accomplished in alternative ways:

1. Develop basal wells to provide reliable capacity and assume significantly higher cost of service due to energy required to pump up to 4,000 foot elevation
2. Separate the Priority List by service area and source, so that subsystems with adequate and reliable capacity are prioritized over subsystems reliant on surface water.
3. Public-private partnerships to develop source and infrastructure that benefit end users of the same subsystem.

²² Central WUPD, Page 106-107

III. Strategies for Creating and Conserving Fresh Water Capacity

Hawaii Fresh Water Blueprint for Action:

Excerpted from website:²³

Hawai'i has been blessed with consistent rainfall, advantageous geology, and high-quality drinking water stores for centuries. **Recent findings, however, have raised concern about long-term fresh water security for our Islands. University of Hawai'i and other scientists have documented troubling trends including reduced rainfall, higher evaporation rates, and declining stream flows in recent decades.** These findings, coupled with the demand of an ever-increasing population, suggest that Hawai'i is entering an era of fresh water uncertainty.

The Hawai'i Fresh Water Initiative (Initiative) was launched in 2013 to bring multiple, diverse parties together to develop a forward-thinking and consensus-based strategy to increase water security for the Hawaiian Islands. Organized by the independent, nonprofit Hawai'i Community Foundation (HCF), the Initiative relied on a blue ribbon advisory panel of individuals (Hawai'i Fresh Water Council or Council) with deep knowledge of water and a collaborative spirit to articulate a vision for a more secure and sustainable water future based on shared values, and shared sacrifice. This Blueprint is the result of their work, and provides Hawai'i policy and decision-makers with a set of solutions that have broad, multi-sector support in the fresh water community that should be adopted over the next three years to put Hawai'i on a path toward water security. The Blueprint also builds on the good work, findings, and recommendations over the years by preceding stewards of Hawai'i's most important resource.

Goal: The Fresh Water Council distilled nearly two years of research and analysis into a single goal: creating 100 million gallons per day (mgd) in additional reliable fresh water capacity for island by 2030.

To achieve the ambitious goal of 100 mgd in additional fresh water capacity, the group outlined three aggressive water strategy areas and individual targets that the public and private sectors must work together to achieve by 2030:

1. **Conservation:** Improve the efficiency of our population's total daily fresh groundwater water use rate by 8% from the current 330 gallons per day/person to 305 gallons per day/person. By 2030, this goal will provide 40 mgd in increased water availability.
2. **Recharge:** Increase Hawai'i's ability to capture rainwater in key aquifer areas by improving storm water capture and nearly doubling the size of our actively protected watershed areas. By 2030, this goal will provide 30 mgd in increased water availability.

²³ https://www.hawaiicommunityfoundation.org/file/cat/Fresh_Water_Blueprint_FINAL_062215_small.pdf, Page 3

3. **Reuse:** More than double the amount of wastewater currently being reused in the Islands to 50 mgd. By 2030, this goal will provide an additional 30 mgd in increased water availability.

Initiative Principles²⁴

- ***Water is a complex issue that demands a comprehensive set of solutions.**
- *Solutions will come from many different sectors, and a good solution in one geographic area may not be appropriate for another area.
- ***Solutions should focus on financial sustainability and cost effectiveness.**
- ***Better information and access to accurate data facilitates good decision-making.**
- ***Entering an era of climate unpredictability argues for more aggressive gathering and monitoring of water data than currently occurs.**
- *"Applied" and/or "targeted" education efforts are more effective than general outreach and awareness campaigns.
- ***Water is as important to our economy and culture as it is to our ecology.**
- ***The current price of water in Hawai'i does not reflect its "true cost."**
- ***Any successful supply solution must provide for Hawai'i's broad spectrum of water uses.**
- *Hawai'i is better-positioned than many other geopolitical bodies to meaningfully address long-term fresh water sustainability.
- ***Native Hawaiian cultural traditions place a high value on water and can provide guidance on how best to steward water.**
- *Public Trust doctrine and our state water code provide an adaptable framework.
- ***There is an urgency to the fresh water supply issue that is not widely evident to the public.**
- ***Costs to address fresh water supply will rise with each year of delay.**
- ***The nexus between water and energy is clear and compelling.**

Adapting To Climate Change, State of Hawaii, Office of Planning:

Hawaii's Climate Change Adaptation Policy²⁵

[Act 234, Session Laws of Hawaii 2007](#), established the state's policy framework and requirements to address Hawaii's GHG emissions. In Act 234, the legislature recognized the following: "... climate change poses a serious threat to the economic well-being, public health, natural resources, and the environment of Hawaii. **The potential adverse effects of global warming include a rise in sea levels resulting in** the displacement of businesses and residences and **the inundation of Hawaii's freshwater aquifers**, damage to marine ecosystems."

²⁴ Fresh Water Blueprint, Page 13

²⁵ <https://planning.hawaii.gov/czm/initiatives/adapting-to-climate-change-2/>

Water Use Development Plan Strategies for Addressing Impacts of the Climate Crisis:

Excerpted from the Central ASEA Draft Water Use and Development Plan²⁶:

Issue and Background: Data and research suggest that Hawai'i should be prepared for a future with a warmer climate, diminishing rainfall, declining stream base flows, decreasing groundwater recharge and storage, and increased coastal groundwater salinity, among other impacts associated with drought. Reliance on surface water will become more uncertain in a future of longer droughts and varying rainfall. No streamflow projections are available for the coming century but projections include a decline in base flow and low flows, with stream flows becoming more variable and unstable (flashy), especially in wet years. Groundwater recharge decreases in drought but local impact from climate change has not been projected to date.

The Central ASEA is especially vulnerable due to water resources used:

- Upcountry region and agriculture dependent on surface water as primary resource.
- Irrigation and other non-potable wells in Paia and Kamaole aquifer coastal areas are subject to sea-level rise

In consistency with the *Climate Change Adaptation Priority Guidelines*, water purveyors should increase resilience and reduce vulnerability to risks related to climate change. Chapter 12 Island Wide Strategies in this plan include the following strategies that can mitigate impacts from climate change:

1. Continue Maui County financial support for watershed management partnerships' fencing and weed eradication efforts (Chapter 12.3, Strategy#1). The Central ASEA is heavily dependent on forested watersheds in the Wailuku and Ko'olau hydrologic units to provide fresh water supplies.
2. Demand side conservation measures, such as water conserving design and landscaping in new development, incentives for efficient irrigation systems, landscape ordinance and promoting xeriscaping in dry areas will increase tolerance for prolonged droughts. (Chapter 12.3 Strategies # 13, 14, 15, 17)
3. Promote alternative resource incentives, such as greywater systems and rainwater catchment to supplement conventional resources. Incentives for green infrastructure and use of alternative water sources are needed to ensure such upfront investments in new development. (Chapter 12.3 Strategies# 20 and 21)
4. Diversify supply for agricultural use to increase reliability. Under extended droughts and low stream flows, diversified agriculture on HC&S lands will compete with priority public trust uses for surface water. Planned extension of R-2 recycled water from the Kahului WWTF to HC&S fields can supplement groundwater from the Central aquifer sector. (Chapter 12.3 Strategy #51).

²⁶ Central WUDP, Page 124

5. Expand requirements for new development to connect to recycled water infrastructure, promote closer collaboration between MDWS and MDEM to utilize Drinking Water State Revolving Funds to maximize recycled water use. (Chapter 12.3 Strategies # 61 and 62)
6. Explore and promote opportunities for large volume stormwater runoff for agricultural irrigation. (Chapter 12.3 Strategy # 66)

Excerpted from the Ko`olau ASEA Draft Water Use and Development Plan:

The concerns regarding climate change in the Ko`olau aquifer are more general. References include:

- Improving the understanding of the concepts of "precautionary planning" to reduce and adapt to the effects of drought and climate change upon water resource availability and quality is important. ²⁷
- Understanding potential impact of climate change adds to uncertainty in long-term groundwater availability. The primary responsibility to determine potential impacts on water resource availability lies with the State CWRM who in turn relies on studies and predictions by the scientific community and other agencies. Water purveyors need guidance how to mitigate and adjust to potential changes in groundwater availability. ²⁸
- Strategy #3: Support collaborative hydrogeological studies to inform impact from climate change and future well development on groundwater health for Haiku and Honopou aquifers. ²⁹

Upcountry Conservation:

The Upcountry region has experienced voluntary and mandatory conservation measures for decades, primarily in dry season when the MDWS Upcountry System reservoir levels are low. Reliance on surface water and constraints in developing additional groundwater causes the system to be vulnerable to droughts.

Demand Side Conservation Measures

Demand side conservation strategies recommended in Section 12.2 that would target outdoor uses of potable water include comprehensive water conservation ordinance to include xeriscaping regulations, landscaping and water efficient irrigation system incentives. In evaluating cost-effectiveness, MDWS compared the costs to develop and deliver new sources of water to meet future demand with the savings attributed to conservation.

²⁷ Ko`olau WUDP, Page 4

²⁸ Ko`olau WUDP, Page 104

²⁹ Ko`olau WUDP, Page 105

A preliminary analysis of the proposed conservation measure portfolio outlined in Section 12.2 shows that doubling current investments (MDWS annual FY14 – FY17 conservation budget, excluding leak detection is \$170,000) would result in net capital and operational savings. The potential for a net savings is expected for both the MDWS Central System and the Upcountry System due to the need for new source development.

Recommended demand side conservation measures at all levels and type of use for public water systems are outlined in table 13-1 (strategies # 10 – 25). There is an opportunity to design and implement conservation measures in new housing development throughout planned growth areas. The recommended conservation Strategies #17, 22 and 25 outlined in Table 13-1 are implemented in the design and build phase and are especially appropriate in planned growth areas:

- Revise county code to require high efficiency fixtures in all new construction. Develop a comprehensive water conservation ordinance to include xeriscaping regulations.
- Revise County Code: Water conserving design and landscaping in new development (xeriscaping targets dry areas).
- Revise County Code and/or incentivize water- efficient building design that integrates alternative sources (grey water, catchment).

Supply Side Conservation Measures

The sustainable and efficient use of water resources, as well as the capacity and integrity of water systems, can be improved by accounting for water as it moves through the system and taking actions to ensure that water loss is prevented and reduced to the extent feasible.

A water audit provides a data driven analysis of water flowing through a water system from source to customer point-of-service and is the critical first step in determining water supply efficiency and responsible actions to manage and reduce water loss consistent with available source, operational and financial resources. Public water systems serving a population of 1,000 or more and those within water management areas regardless of population served are required to submit annual water audits beginning July 1, 2020. Except for the MDWS systems, there are no large public water systems in the aquifer sector subject to the requirement. The fiscal year 2017 audit for the Upcountry system revealed that apparent water losses are often due to data gaps between the amount of water withdrawn at the source, treated, stored and billed. The results will guide MDWS data collection, maintenance and repair programs.

Input from the WUDP public process and issues identified in the community plans relate to water shortages and conservation³⁰:

³⁰ Central WUDP, Page 102

- Reliance on surface water Upcountry makes the system vulnerable to drought conditions
- Voluntary and mandatory water use restrictions imposed on residential and agricultural users during droughts often negatively impact the productivity of farmers
- Promote conservation of potable water through use of treated wastewater effluent for irrigation.
- Reuse treated effluent from the County’s wastewater treatment system for irrigation and other suitable purposes in a manner that is environmentally sound.
- Provide incentives for water and energy conservation practices.
- Promote energy conservation and renewable energy.
- Incorporate drought-tolerant plant species and xeriscaping in future landscape planting.

Qualitative criteria to evaluate and measure resource strategies against this planning objective include:

- Per capita water use decreased
- Potable and irrigation systems water loss decreased
- Community water education increased
- Incentives for water conservation increased
- Renewable energy use increased

Other Ways of Increasing Availability of Potable and Non-Potable Water:

Reservoirs:	
<p><u>Central WUDP, Page 123:</u> In summary, reservoir and treatment plant expansion would have multiple benefits:</p> <ol style="list-style-type: none"> 1. Improve reliable capacity 2. Economical water supply that minimizes expensive groundwater pumping costs 3. Defer source development in Haiku aquifer in light of uncertainties related to the East Maui Consent Decree 4. Recharge regional groundwater in wet season when maximizing use of stormflow from rainfall <p>If financing can be secured, raw water storage construction presents an economic strategy compared to basal well development. If a string of basal wells and extensive transmission would be added to the MDWS Upcountry System during the same time frame as a reservoir, the economic benefit would be significantly diminished. Both resource strategies have long implementation time frames and can be adjusted over time. Should development of basal source in the Makawao aquifer produce adequate yield and quality, additional wells in Haiku aquifer OR expanded surface</p>	<p><u>Central WUDP, Page 124: Strategy #8:</u> Pursue hydrologic studies needed to explore the Haiku aquifer and an updated ditch flow analysis to optimize raw water storage and treatment plant capacity at Kamole Weir in order to expedite the most feasible new source. Raw water storage and Kamole Water Treatment Facility expansion are contingent on a long term agreement with A&B Properties allocating adequate surface water for the MDWS Upcountry System. Lead agency is MDWS.</p> <p>This strategy supports multiple planning objectives, including to seek expanded municipal withdrawal from the lowest cost source to serve the Upcountry region and to increase water storage capacity with a reserve for drought periods.</p> <p><u>Central WUDP, Page 104, Water Loss Mitigation:</u> Explore funding and conduct a cost benefit analysis of improvements to the EMI non potable conveyance system to mitigate losses and preserve existing reservoirs at risk of decommissioning. County of Maui and A&B Properties/EMI Company in partnership would</p>

<p>water storage and treatment will meet projected demand. Uncertainties in future stream flow must be weighed against increased reliability and cost of basal well development. Maximizing affordable surface water use in wet season must be weighed against “over building” expensive wells and infrastructure that is not used to capacity.</p> <p>On Oahu, the BWS also operates brackish and recycled water nonpotable water systems for irrigation and industrial use in ‘Ewa, Mākaha, and Hālawā Airport. The BWS owns and maintains five dams or open reservoirs. Four reservoirs in Nu‘uanu are now used solely for flood control, and the fifth, Mauna ‘Olu reservoir, stores nonpotable water used for irrigation. The four Nu‘uanu reservoirs may be used for stormwater capture, infiltration, or hydropower in the future.³¹</p>	<p>lead initiatives. Priority components and associated costs TBD.</p> <p><u>Page 3-4, DEIS:</u> EMI Aqueduct System has eight reservoirs, mostly along the lower ditch systems, and the Central Maui field irrigation system has 48 major reservoirs The combined storage capacity of these existing reservoirs is approximately 1,344 mg (Akinaka, 2019). Most of these reservoirs, however, have not been used since the closure of sugar in 2016 and others have not been used because they do not meet dam safety requirements. As a result, many will require extensive upgrades to put them back into service. These upgrades could cost between \$50 – 100 million (Akinaka, 2019). Obtaining permits to upgrade and repair these reservoirs will also be challenging due to current dam safety requirements. Assuming that the existing reservoirs can be restored to their full capacity of 1,344 mg, and the amount of flow available for irrigation under the Proposed Action is approximately 92.32 mgd, then the existing reservoirs could provide about 16 days of storage</p>
<p>Recycled Water:</p>	
<p>The State of Hawai‘i defines R-1 water as the highest-quality recycled water; it has undergone filtration and disinfection to make it safe for use on lawns, golf courses, parks, and other areas used by people. R-2 recycled water can only be used under restricted circumstances where human contact is minimized.</p>	<p><u>Central WUDP, Page 57:</u> Wastewater generated within the Central ASEA is treated at the Kahului Wastewater Reclamation Facility (WWRF), east of Kahului Harbor, and the Kihei WWRF.</p>
<p>Rainwater Catchment:</p>	
<p><u>Ko‘olau WUDP, Page 73:</u> Rainwater catchment is the collection of rainwater from a roof or other surface before it reaches the ground.</p> <p>Rainwater catchment systems are not regulated by the Department of Health, making estimates of their use difficult. No inventory of installed catchment systems throughout the island is available.</p> <p><u>Central WUDP, Page 129:</u> Rain barrel incentive programs are included in recommended demand side conservation strategies and the MDWS conservation program.</p> <p>Catchment systems for agricultural uses have historically played an important role Upcountry. Support for increased adaptation to natural ambient rainfall and climate adapted crops is consistent with the objective to</p>	<p><u>Ko‘olau WUDP, East Maui, Page 28:</u> On average, USGS data indicates rainfall ranges from 101-454 inches per year, making the Ko‘olau ASEA Maui Island’s rainiest ASEAs and one of the wettest places in Hawai‘i. The heaviest rainfall is in the Ke‘anae ASYA, where it rains as much as 454 inches per year. The cooler, dryer upper elevations may have as little as 101 inches of rain per year. Rainwater catchment is not as reliable a conventional water resource because it is extremely sensitive to the climate; however, rainwater catchment is a viable option in this region.</p> <p><u>Central WUPD, Upcountry and Central, Page 56:</u> Rainfall averages 15 inches along the southern coastline on Haleakala, and it increases to 70 inches as one moves eastward and into higher elevations. Rainfall catchment systems occur in the eastern part of the hydrologic unit,</p>

<p>use appropriate water quality for appropriate uses.</p>	<p>from Makawao and Olinda and also scattered throughout Kula. There is no official inventory of catchment systems but it is an important supplemental resource for non-potable purposes. Catchments systems using potable treatment technologies have been installed Upcountry due to water meter limitations imposed by the Upcountry Meter Priority List.</p>
<p>Stormwater Reuse:</p>	
<p>The Fresh Water Council believes that a critical element of protecting long-term water security in the Hawaiian Islands is to aggressively increase our ability to capture rainfall and surface storm water. Our underground fresh water supply can be restored with: 1) reduced pumping from the aquifers; 2) increased rainfall; and/or, 3) increased effective recharge.³²</p> <p><u>Central WUPD, Page 129:</u> Stormwater capture and use can provide multiple mitigating effects on climate change, including off-setting potable supply for irrigation needs; recharging low level and more brackish portions of the region’s aquifers; and mitigating sediment runoff reaching the nearshore marine environment and reefs.</p> <p><u>Central WUDP, Page 58:</u> Capture and reuse of stormwater runoff is an under-utilized water resource that provides an opportunity to reduce reliance on groundwater and surface water for landscape irrigation, especially when incorporated into the design of development projects in order to minimize infrastructure costs.</p>	<p>There is no reported stormwater reuse within the Ko’olau ASEA, although a limited number of development projects may have stormwater controls incorporated into project design to reduce runoff and its effects.</p> <p>Stormwater reuse at the parcel scale may also provide an opportunity to offset landscape and other irrigation demand of projects or households.</p> <p><u>Central WUPD, Page 58:</u> There is no reported stormwater reuse in the Central ASEA, although some development projects may have stormwater controls incorporated into project design to reduce runoff and its effects. The <i>Hawai’i Stormwater Reclamation Appraisal Report, 2005, and Study Element 3: An Appraisal of Stormwater Reclamation and Reuse Opportunities in Hawai’i</i>, September 2008, screened and identified four projects on Maui within the final ranking, which might provide opportunities to augment agricultural irrigation water that is diverted currently from Maui streams, in addition to providing other benefits.</p>
<p>Desalinization:</p>	
<p>Desalination of ocean or brackish water was studied as an option in the 2013 MDWS study, Maui Island Water Source Development Options for the Central MDWS system, but an assessment has not been conducted for the Ko’olau ASEA, and there are presently no desalination projects within. There are no desalination projects in the Central ASEA.</p>	<p>One major cost to operate a desalination plant is the high energy demand of the process, and the disposal of the brine liquid byproduct creates logistical and environmental challenges that also increase cost. As desalination technology advances and energy costs decrease, brackish and ocean water desalination should continue to be evaluated for their potential as effective future water supply alternatives.</p>

³² Fresh Water Council, Page 13

Excerpted from the Maui Island Water Use and Development Plan Draft, Part III Regional Plans, Ko`olau Aquifer Sector Area (ASEA)³³:

Conventional water sources include groundwater (wells and tunnels) and surface water (stream diversions). Region specific planning objectives related to ground and surface water use and development identified and confirmed in the WUDP update public process include:

- Improving the understanding of the concepts of "precautionary planning" to reduce and adapt to the effects of drought and climate change upon water resource availability and quality
- Adapting future populations to local water resource conditions, integrating conservation and the use of alternative resources
- Water needs of DHHL in the Ko`olau should be considered in general and in accordance with the 2017 State Water Projects Plan

Planning objectives related to groundwater and surface water source use and development identified to apply island wide include:

- Manage water equitably
- Provide for Department of Hawaiian Homelands needs
- Provide for agricultural needs
- Protect cultural resources
- Provide adequate volume of water supply
- Maximize reliability of water service
- Minimize cost of water supply
- Increase water storage capacity with a reserve for drought periods.
- Ensure that adequate water capacity is available for domestic needs of the region.
- Ensure that the development of new water sources does not adversely affect in-stream flows.
- Improve the existing potable water distribution system and develop new potable water sources prior to further expansion of the State Urban District boundary or major subdivision of land in the State Agricultural or Rural Districts.
- Ensure adequate supply of groundwater to residents of the region before water is transported to other regions of the island.

³³ Ko`olau WUPD, Page 103

East Maui Watershed Management:

Excerpted Ko`olau Draft Water Use and Development Plan³⁴:

East Maui watersheds are predominately vegetated by native Hawaiian rainforest. The plants there evolved over millions of years into the most efficient water collection system for our island's geography. It works in layers – tall 'ōhi'a and koa trees provide a canopy for shorter trees, while shrubs and ferns fill in underneath, and a thick layer of mosses and leaf litter complete the floor. These layers act like a giant sponge, slowing down heavy raindrops and soaking up water for slow release into underground aquifers. Even during droughts, our watersheds can produce water, pulling water out of the clouds by collecting fog drip. This uniquely evolved, specialized forest is the key to Maui's healthy water supply harbor endemic and rare native plant and bird species. The main threats to the native forest and ecosystems are habitat loss and alterations due to feral ungulates (pigs, deer, goats) and invasive plants. These are detrimental both to biodiversity and water supply.

Active management to ensure protection and preservation of these important watershed lands occur on federal, state and community levels.

Excerpted from the Central Draft Water Use and Development Plan³⁵:

Issue and Background: Most land within this hydrologic unit are water resource "import" areas, rather than "export" areas in the sense that population and agricultural operations rely on water resources from adjacent watersheds. Watershed management in both types of watersheds are important. The Department of Land and Natural Resources has identified "Priority Watershed Areas" which are areas of highest rainfall and resupply, based on climatic conditions that provide high recharge and fog capture. Currently protective measures are focused in these priority areas above the 3,000 foot elevation with direct benefit to makai lands and the nearshore environment. The East Maui Watershed Partnership (EMWP) manages most of the forested upper critical watersheds of Ko`olau aquifer sector. Ongoing efforts include ungulate control through fence construction, retrofitting and regular trap checks weed management, monitoring, and human activities management through outreach and education. On the dry side of Haleakala, the Leeward Haleakala Watershed Restoration Partnership (LHWRP) works towards restoring the disturbed landscape where once dryland forests captured rain and fog that recharged the freshwater supply. The Maui Invasive Species Committee (MISC) targets pest animals and plant species to prevent their influx and establishment in the mauka critical watersheds. Their efforts occur throughout the Central ASEA in rural and agricultural regions as needed.

³⁴ Ko`olau WUDP, Page 99

³⁵ Central, WUDP, Page 100, 101

The Makawao-Pukalani-Kula Community Plan states as objectives:

- *Recognize the importance of the forested watershed areas and that their health and well-being are vital to all the residents of the Upcountry area.*
 - *Explore a comprehensive reforestation program to increase and catch more rainwater for the Upcountry area.*
-

The objectives support the ongoing efforts by EMWP, LHWRP and MISC. State and county agencies as well as private purveyors can provide financial support and participation in watershed protection partnerships and reforestation programs. Strategies for watershed management in Ko`olau is addressed in the Ko`olau ASEA Report, Chapter 16.8.1. Management efforts on leeward Haleakala is addressed in the Kahikinui ASEA Report, Chapter 18.8.1

Maui Forest Protection and Cost Savings:

Recent studies underway are showing that investment in the restoration and maintenance of the East Maui watershed will provide financial benefits far greater than the costs being expended. The benefits will come in the form of increase water supply, more dependable water supply, and perhaps even fewer costs in the maintenance of the ditch system itself.

For example: Researchers from the University of Hawaii Economic Research Organization (UHERO) and Water Resources Center partnered with the Nature Conservancy of Hawaii to evaluate how native forest conservation contributes to local water supplies in a water stressed area in East Maui. They found that by preventing the degradation of native forest, conservation efforts could save the local water utility up to 137.6 million dollars over 100 years depending on a range of assumptions. This finding demonstrates that it makes practical sense for water utilities to join collective action efforts to finance watershed conservation, which in turn provides a suite of benefits in addition to water.³⁶

The Department of Water Supply Division of Water Resources and Planning provided \$20,000 to help fund the study through a grant to the Nature Conservancy. The UHERO study limited data to watershed conversion from one native species (ohia) to one invasive species (strawberry guava). DWS is funding a USGS study that addresses complex relationship between hydrologic impact from actual watershed protection/restoration of specific native species and habitats on Maui. This completion date of the study is not yet determined.

³⁶ <https://uhero.hawaii.edu/news/view/356>

Excerpts from a paper titled “Contributions of native forest protection to local water supplies in E. Maui Study”³⁷:

While the direct and indirect benefits of forest conservation efforts are multiple and diverse, we focus on quantifying one key hydrologic service (groundwater recharge) and associated benefit (present value benefit¹ to the water utility), as an important step towards understanding the synergies between land and water management.

We focus on groundwater recharge benefits, as groundwater is an important source of drinking water and was identified by the Maui County Department of Water Supply (DWS) as clearly linked to future costs of meeting water consumption needs into the future. We worked with DWS to estimate future water consumption needs and to calculate the projected benefits (expressed in present value terms) of protecting groundwater recharge via watershed conservation. We also collaborated with the land manager, The Nature Conservancy, to assess management costs of protection.

2.5. Costs of watershed management

In order to compare the benefits of forest conservation in terms of groundwater recharge and cost savings to the water utility to the costs of maintaining native forest through watershed protection and management, we also estimated the management costs covered by the land manager. Watershed management efforts in Waikamoi began over three decades ago. Historical expenditures over the period 1995–2012 were aggregated from The Nature Conservancy's Long-Range Management Plans ([The Nature Conservancy of Hawai'i, 1993](#), [The Nature Conservancy of Hawai'i, 1999](#), [The Nature Conservancy of Hawai'i, 2006](#), [The Nature Conservancy of Hawai'i, 2011](#)). Costs were attributed to ungulate control, invasive plant control, invertebrate and small mammal control, monitoring, rare species protection and research, public outreach programs, personnel, equipment, and facilities. Expenditures on fence construction for the exclusion of ungulates were estimated based on the total length of regularly inspected fence line in Waikamoi (30.6 km) and unit costs of \$124,275/km and \$246,064/km for pig and deer fences respectively. Recent expenditures (2013–2017) were obtained through discussions with TNC Maui staff. Future annual watershed protection costs for the period 2018–2117 were projected based on average historical maintenance costs, i.e. not including costs associated with initial fence construction and major ungulate removal drives.

³⁷ <https://www.sciencedirect.com/science/article/pii/S0048969719327937>

3.2. Monetary benefits of avoided loss of groundwater recharge/reduced water costs

Present value benefits for the benchmark scenario (assuming a 10% spread rate, 3% discount rate and 2035 shortfall year) totaled \$37.2 million. Reducing the non-native forest spread rate from 10% to 5%, while keeping the discount rate and shortfall assumption unchanged, substantially reduced benefits to \$11.1 million. However, benefits appear fairly robust to changes in the shortfall year for both counterfactual scenarios. Varying the date of initial supplementation of existing groundwater sources to 2030 and 2040 resulted in benefits of \$38.5 million and \$35.7 million respectively for the 10% spread rate scenario and \$11.3 million and \$10.9 million for the 5% spread rate scenario. Benefit estimates were much more sensitive to the discount rate. Assuming a 10% spread rate, decreasing the discount rate to 1% increased benefits to \$137.6 million, while increasing the discount rate to 5% reduced benefits to \$11.3 million. In the 5% spread case, reducing the discount rate raised benefits to \$52.1 million, while increasing the discount rate lowered benefits to \$2.7 million.

Nexus Between EMI Delivery System & East Maui Watershed:

<p>A detailed environmental and cost analysis of Watershed Management and Restoration building on the Water Use and Development Plan and UHERO study above is needed.</p>	<p>Watershed Restoration has proven water production results. In order to ensure optimum water value realization based on research and data, public and private entities must be required to make the necessary investments.</p>
<p>The Hawaii Fresh Water Initiative calls for investment in watershed protection statewide as a crucial step for water security. Consistent, reliable public funding is the most difficult and important part of watershed protection and storm water capture.³⁸</p>	<p>One recent University of Hawai'i Economic Research Organization (UHERO) study estimated that <u>investing \$43.2 million</u> in watershed restoration work in the Ko'olau mountains could result in over <u>\$900 million in actual realized water value</u> for O'ahu.³⁹</p>
<p>Current commitments to management and restoration by Maui County represent 1/3 of total investment. Fiscal Year 2020: \$900,000</p>	<p>Watershed Partnership Annual Investment in East Maui Watershed Restoration. Fiscal Year 2020: \$1,781,000</p>
<p>There appear to be no specific commitments to Management and Restoration of the East Maui Watershed by Mahi Pono/EMI in the Draft EIS. <u>Page 2-2, DEIS:</u> Under the Proposed Action, it is anticipated that EMI and/or Mahi Pono will continue to pursue watershed management activities."</p>	<p>HRS § 171-58(e) requires that any new lease of water rights "shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan."</p>
<p>Commitments to providing water for taro farming are crucial to the care of the watershed.</p>	<p>... Native Hawaiians divided the land into <i>ahupua'a</i> — subdivisions running from the ocean to the mountains, roughly defined by their watersheds. Fresh water flowed through complex ditch systems called <i>'auwai</i>, often toward taro <i>lo'i</i>, where it supported the cultivation of hundreds of variety of taro—a dietary mainstay for the population. Intact native forests in the <i>wao akua</i>, along with diversion systems of <i>'auwai</i> and <i>lo'i</i> in the lowland areas slowed down water down and increased aquifer recharge in each watershed.⁴⁰</p>
<p>Various computer climate models predict divergent precipitation futures for Hawai'i, although there seems to be common agreement that our rainfall future will be increasingly extreme and inconsistent. There is also high variation throughout the islands in terms of each watershed's ability to catch and hold water. In sum, the question is not whether Hawai'i will have water in the future, but rather will Hawai'i continue to have an affordable, predictable supply in the places we need at the times that we need for a growing population?"⁴¹</p>	<ul style="list-style-type: none"> • Rainfall in Hawai'i decreased by 18% over a 30 year period in Hawai'i from 1978 to 2007. • Annual "tradewind days" have declined 28% from 291 days in 1973 to 210 days in 2009, resulting in less rain and recharge of aquifers. • Hawai'i has been feeling the impact of prolonged drought. In the summer of 2013, 75% of Hawai'i's land area was "Abnormally Dry." • Groundwater provides 99% of the state's domestic water use and in several key areas groundwater levels have been dropping. • Increased temperatures associated with global warming mean increased evaporation for surface water and soil moisture. • Certain invasive plant and tree species have higher evapotranspiration rates than native species in Hawai'i. Hawai'i forests are increasingly encroached on by invasives.⁴²

³⁸ Fresh Water Blueprint, Page 13

³⁹ Fresh Water Blueprint, Page 7

⁴⁰ Fresh Water Blueprint, Page 9

⁴¹ Fresh Water Blueprint, Page 5

⁴² Fresh Water Blueprint, Page 5

Stream Restoration:

A separate but related issue for watershed management and repair and maintenance of the EMI Water Delivery System is restoration of the streams, due in part to changes in stream diversions.

In 2020, the State Department of Agriculture is providing \$4.5 million to support local agriculture. This is currently a one-time allocation, which will support the plans, design and construction to rebuild auwai in Ke'anae-Wailuanui and similar rural water infrastructure projects. This allocation is considered to be a fraction of what is truly needed to support taro farmers, and is limited somewhat because funds can only be used on public lands (county or state) and expenses for each project are high due to accessibility and dangerous conditions. The goal is to maintain and hopefully increase funding in the future. Further, it indirectly helps the watershed by supporting lo'i (see above).

Environmental and Social Impacts of Agriculture:

Per the November 2018 Impact investing in the global food and agricultural investment space, Investing profitably whilst fostering a sustainable and thriving agriculture⁴³:

It is now acknowledged that agriculture is a strong contributor to climate change, with a sector contribution of 19-29% of total global greenhouse gas emissions. According to the Food and Agriculture Organization (FAO), Agriculture, forestry and other land uses (AFLOU) have emitted a total of 10.6 gigatonnes of CO2 equivalent in 2010. The main direct sources of GHG emissions in agriculture are not only carbon dioxide (CO2), but also nitrous oxide (N2O), mostly through the application of fertilizers, and methane (CH4), essentially from livestock and rice cultivation. Deforestation and land degradation have also reduced the sector's capacity to absorb or sequester carbon dioxide from the atmosphere.

Moreover, as has been stated in the report on "Strategies for mitigating climate change in agriculture" by California Environmental Associates and Climate focus, April 2014, while governments, bilateral development agencies, and multilateral financial institutions are dedicating significant resources to increasing agricultural yields globally, less emphasis has been placed on making agriculture environmentally sustainable. Croplands and pasturelands already cover nearly 40 percent of the earth's land area, and agriculture consumes 70 percent of freshwater used by humans.

⁴³ <https://www.valoral.com/wp-content/uploads/Valoral-Advisors-Impact-Investing-November-2018.pdf>

Agriculture is also the world's largest driver of species loss and habitat conversion and is a major contributor to toxic and nutrient pollution, soil degradation, and invasive species introductions. These pressures on our resources will only continue to grow as global population and income levels rise. It is important that the agriculture sector transforms itself and implements sustainable agricultural practices that allow it to become more caring of nature and of the environment that surrounds us.

At the same time, climate change is already affecting the agriculture sector in a multitude of ways, which can vary from region to region. For example, we have started to observe rising temperatures, loss of biodiversity, increased prevalence of extreme weather events such as floods, cyclones and hurricanes and increased unpredictability of weather patterns.

...All these changes have deep consequences in the agriculture sector, and can be translated into harmed crops and reduced yields, reduced feed supply and carrying capacity of pastures and increases in animals' vulnerability to disease, which reduces fertility and milk and meat production, reduced fish stocks due to warmer water temperatures and reduced capacity of forests to provide crucial goods and services.

According to its DEIS, Mahi Pono intends to use 65.88 mgd of water from the EMI aqueduct for agriculture, and while the EIS acknowledges the negative impacts of agriculture on the climate crisis, there are no specific estimates of how Mahi Pono's farm activities will impact climate, only the statement that ranching activities will be "negligible." The following section is excerpted from the Draft EIS⁴⁴:

The Proposed Action will allow for the continued conveyance of water through the EMI Aqueduct System to allow for the transition of the agricultural fields in Central Maui to a diversified agricultural operation. Various studies indicate that agricultural activities can be a source of GHGs that aggravate climate disruption. Agriculture creates both direct and indirect emissions. Direct emissions come from fertilized soils and livestock manure. While indirect emissions come from runoff and leaching of fertilizers, emissions from land-use changes, use of fossil fuels for mechanization, transport and agro-chemical and fertilizer productions. Various management practices in the agricultural land can lead to production and emission of GHGs, which range from fertilizer application to methods of irrigation, tillage and cattle and feedlots.

However, the agricultural sector has large potential to mitigate climate change. According to the Intergovernmental Panel on Climate Change (IPCC) (2013), mitigation is an intervention to reduce the emissions sources or enhance the GHG sinks. GHG emissions through energy conservation, lower levels of carbon-based inputs, lower use of synthetic fertilizer and other features that minimize GHG emissions and sequester carbon in the soil.

⁴⁴ DEIS, P. 4-74 and 4-75

As Mahi Pono's farm plan becomes operational, GHG emissions from internal combustion engines in farming equipment, and transportation related to crop production and workers will increase over the current fallow conditions. When fully operational, the amount of GHG emissions compared to former sugarcane operations does not suggest that one would be significantly greater than the other. There will be seasonal differences in emissions with a sugar monocrop generating more emissions during seasonal harvests while diversified agriculture would likely be distributed due to differences in crop cycles. Sugar also involved burning but such emissions were not from fossil fuels. Sugar also involved transporting products overseas for processing and distribution while diversified agriculture could reduce the amount of food crops imported from overseas as it increases the amount of local food production.

Mahi Pono's farm plan proposes livestock operations on the agricultural fields in Central Maui. The livestock sector requires a significant amount of natural resources and has a role in GHG emissions, especially methane and nitrous oxide. Methane, mainly produced by enteric fermentation and manure storage, is a gas which has an effect on global warming 28 times higher than carbon dioxide. Nitrous oxide, arising from manure storage and the use of organic/inorganic fertilizers, is a molecule with a global warming potential 265 times higher than carbon dioxide (IPCC, 2013). However, in comparison to other livestock operations on the island, such as Ulupalakua Ranch, which operates on approximately 18,000 acres, Mahi Pono's livestock operation will be negligible. Additionally, Mahi Pono's farm plan also includes a utility scale solar farm to supply power to the public power grid, and will also use power from two existing hydro- electric facilities to provide power to pumps and wells, and other infrastructure.

However, the exact nature of how the climate will change and impacts from any changes is unknown. As research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

General Resource Management:

Planning objectives related to resource management identified in the WUDP update public process include:⁴⁵

- Watershed protection and its prioritization, including invasive alien plant control, ungulate control, and reforestation via watershed partnership programs
- Maintaining access to lands for gathering, hunting and other native Hawaiian traditional and customary practices
- Improving the understanding of the concepts of "precautionary planning" to reduce and adapt to the effects of drought and climate change upon water resource availability and quality

⁴⁵ Ko'olau WUDP, Page 99

- Consultation and coordination with Native Hawaiian community/moku and local experts on resource management and invasive species removal

The Hāna Community Plan reflects regional issues expressed at the community WUDP meetings. Policies related to water resource management include:

- Protect, preserve and increase natural marine, coastal and inland resources, encouraging comprehensive resource management programs
- Ensure that groundwater and surface water resources are preserved and maintained at capacities and levels to meet the current and future domestic, agricultural, commercial, ecological and traditional cultural demands
- Recognize residents' traditional uses of the region's natural resources which balance environmental protection and self-sufficiency
- Discourage water or land development and activities which degrade the region's existing surface and groundwater quality
- Encourage resource management programs that maintain and re-establish indigenous and endemic flora and fauna
- Protect, restore and preserve native aquatic habitats and resources within and along streams
- Ensure that the development of new water sources does not adversely affect in-stream flows
- Increase water storage capacity with a reserve for drought periods.
- Improve the existing potable water distribution system and develop new potable water sources prior to further expansion of the State Urban District boundary or major subdivision of land in the State Agricultural or Rural Districts.
- Ensure adequate supply of groundwater to residents of the region before water is transported to other regions of the island.

Key issues for the Ko`olau region were identified in public meetings held in Hāna over 2016. Community concerns overlap with those of the Hāna aquifer sector and relate to watershed management and participation by the local community; maintenance of traditional resource management using the ahupua`a system and ensuring that traditional and customary practices are safe guarded. Community members state that younger generations are returning to Ko`olau and Hāna to establish taro lo`i. Other key issues for the region focus on providing affordable water for future needs, providing for taro lo`i and other public trust uses during droughts, and managing resources in a sustainable way.

Due to resource interdependencies, East Maui (Hāna and Ko`olau ASEAs) community concerns are also related to the primary concerns of Makawao-Pukalani-Kula residents, which center on the limited development of water resources and a distribution system to meet the needs of the region. The proper allocation of water resources is considered essential to, in order of priority:

- (1) preserve agriculture as the region's principal economic activity, promote diversified agricultural activities, and effectively encourage the development of Department of Hawaiian Home Lands (DHHL) parcels; and
- (2) However, water use in the Upcountry region is recognized as having impacts on the streams of East Maui and the agricultural activities of the central valley.

A comprehensive water management strategy must be developed to strike a balance between the various interests and accommodate environmental, agricultural and on Upcountry and East Maui water issues as they relate to each other and the Central Maui ASEA.⁴⁶

⁴⁶ Ko'olau WUDP, Page 98

IV. Native Hawaiian Land & Water Rights

Hawaiian Homes Commission Act, 1921:

(Bold added for emphasis):

[§101. Purpose.] [Text of section subject to consent of Congress.]

- (a) The Congress of the United States and the State of Hawaii declare that the policy of this Act is to enable native Hawaiians to return to their lands in order to fully support self-sufficiency for native Hawaiians and the self-determination of native Hawaiians in the administration of this Act, and the preservation of the values, traditions, and culture of native Hawaiians.
- b) The principal purposes of this Act include but are not limited to:
- 1) Establishing a permanent land base for the benefit and use of native Hawaiians, upon which they may live, farm, ranch, and otherwise engage in commercial or industrial or any other activities as authorized in this Act;
 - 2) Placing native Hawaiians on the lands set aside under this Act in a prompt and efficient manner and assuring long-term tenancy to beneficiaries of this Act and their successors;
 - 3) Preventing alienation of the fee title to the lands set aside under this Act so that these lands will always be held in trust for continued use by native Hawaiians in perpetuity;
 - 4) **Providing adequate amounts of water and supporting infrastructure, so that homestead lands will always be usable and accessible; and**
 - 5) Providing financial support and technical assistance to native Hawaiian beneficiaries of this Act so that by pursuing strategies to enhance economic self-sufficiency and promote community-based development, the traditions, culture and quality of life of native Hawaiians shall be forever self-sustaining.
- c) In recognition of the solemn trust created by this Act, and the historical government to government relationship between the United States and Kingdom of Hawaii, the United States and the State of Hawaii hereby acknowledge the trust established under this Act and affirm their fiduciary duty to faithfully administer the provisions of this Act on behalf of the native Hawaiian beneficiaries of the Act.
- d) Nothing in this Act shall be construed to:
- 1) Affect the rights of the descendants of the indigenous citizens of the Kingdom of Hawaii to seek redress of any wrongful activities associated with the overthrow of the Kingdom of Hawaii; or

- 2) Alter the obligations of the United States and the State of Hawaii to carry out their public trust responsibilities under section 5 of the Admission Act to native Hawaiians and other descendants of the indigenous citizens of the Kingdom of Hawaii. [L 1990, c 349, §1]

§220. Development projects; appropriations by legislature; bonds issued by legislature; mandatory reservation of water.

- a) Subject to subsection (d), the department is authorized directly to undertake and carry on general water and other development projects in respect to Hawaiian home lands and to undertake other activities having to do with the economic and social welfare of the homesteaders, including the authority to derive revenue from the sale, to others than homesteaders, of water and other products of such projects or activities, or from the enjoyment thereof by others than homesteaders, where such sale of products or enjoyment of projects or activities by others does not interfere with the proper performance of the duties of the department; provided that roads through or over Hawaiian home lands, other than federal-aid highways and roads, shall be maintained by the county in which the particular road or roads to be maintained are located.
- b) The legislature is authorized to appropriate out of the treasury of the State such sums as it deems necessary to augment the funds of the department and to provide the department with funds sufficient to execute and carry on such projects and activities. The legislature is further authorized to issue bonds to the extent required to yield the amount of any sums so appropriated for the payment of which, if issued for revenue-producing improvements, the department shall provide, as set forth in section 213.
- c) To enable the construction of irrigation projects which will service Hawaiian home lands, either exclusively or in conjunction with other lands served by such projects, the department is authorized, with the approval of the governor, and subject to subsection (d), to:
 - 1) Grant to the board of land and natural resources, or to any other agency of the government of the State or the United States undertaking the construction and operation of such irrigation projects, licenses for rights-of-way for pipelines, tunnels, ditches, flumes, and other water conveying facilities, reservoirs, and other storage facilities, and for the development and use of water appurtenant to Hawaiian home lands;
 - 2) Exchange available lands for public lands, as provided in section 204 of this Act, for sites for reservoirs and subsurface water development wells and shafts;
 - 3) Request any such irrigation agency to organize irrigation projects for Hawaiian home lands and to transfer irrigation facilities constructed by the department to any such irrigation agency;
 - 4) Agree to pay the tolls and assessments made against community pastures for irrigation water supplied to such pastures; and

- 5) Agree to pay the costs of construction of projects constructed for Hawaiian home lands at the request of the department, in the event the assessments paid by the homesteaders upon lands are not sufficient to pay such costs;

provided that licenses for rights-of-way for the purposes and in the manner specified in this section may be granted for a term of years longer than is required for amortization of the costs of the project or projects requiring use of such rights-of-way only if authority for such longer grant is approved by an act of the legislature of the State. Such payments shall be made from, and be a charge against the Hawaiian home operating fund.

- d) For projects pursuant to this section, sufficient water shall be reserved for current and foreseeable domestic, stock water, aquaculture, and irrigation activities on tracts leased to native Hawaiians pursuant to section 207(a). [Am Jul. 10, 1937, c 482, 50 Stat 507; Nov. 26, 1941, c 544, §6, 55 Stat 786; Jun. 14, 1948, c 464, §7, 62 Stat 393; Aug. 1, 1956, c855, §1, 70 Stat 915; am L 1963, c 207, §§2, 5(a); am L 1986, c249, §4; am L 1991, c 325, §2]

Cross References

Bond issues, see Organic Act, §55 and HRS chapters 39, 47, and 49.

Water or irrigation projects, see §§167-13, 167-14; §174-13.

Attorney General Opinions

Lien on lands as security for improvement bonds is not authorized. Att. Gen. Op. 63-25.

Law Journals and Reviews

Native Hawaiian Homestead Water Reservation Rights: Providing Good Living Conditions for Native Hawaiian Homesteaders.25 UH L. Rev. 85.

Case Notes

Pursuant to article XI, §§1 and 7 of the Hawaii constitution, subsection (d) of this Act, and §174C-101(a), a reservation of water constitutes a public trust purpose.103 H. 401, 83 P.3d 664.

Where commission on water resource management failed to render the requisite findings of fact and conclusions of law with respect to whether applicant had satisfied its burden as mandated by the state water code, it violated its public trust duty to protect the department of Hawaiian home lands' reservation rights under the Hawaiian Homes Commission Act, the state water code, the state constitution, and the public trust doctrine in balancing the various competing interests in the state water resources trust.103 H. 401, 83 P.3d 664.

Where commission on water resource management refused to permit cross examination of water use applicant's oceanography expert regarding the limu population along the shoreline, in effect precluding the commission from effectively balancing the applicant's proposed private commercial use of water against an enumerated public trust purpose, the commission failed adequately to discharge its public trust duty to protect native Hawaiians' traditional and customary gathering rights, as guaranteed by this section, article XII, §7 of the Hawaii constitution, and §174C-101.103 H. 401, 83 P.3d 664.

§221. Water.

(a) When used in this section:

- 1) The term "water license" means any license issued by the board of land and natural resources granting to any person the right to the use of government-owned water; and
- 2) The term "surplus water" means so much of any government-owned water covered by a water license or so much of any privately owned water as is in excess of the quantity required for the use of the licensee or owner, respectively.

b. All water licenses issued after the passage of this Act shall be deemed subject to the condition, whether or not stipulated in the license, that the licensee shall, upon the demand of the department, grant to it the right to use, free of all charge, any water which the department deems necessary adequately to supply the livestock, aquaculture operations, agriculture operations, or domestic needs of individuals upon any tract.

- c) In order adequately to supply livestock, the aquaculture operations, the agriculture operations, or the domestic needs of individuals upon any tract, the department is authorized (1) to use, free of all charge, government-owned water not covered by any water license or covered by a water license issued after the passage of this Act or covered by a water license issued previous to the passage of this Act but containing a reservation of such water for the benefit of the public, and (2) to contract with any person for the right to use or to acquire, under eminent domain proceedings similar, as near as may be, to the proceedings provided in respect to land by sections 101-10 to 101-34, Hawaii Revised Statutes, the right to use any privately owned surplus water or any government-owned surplus water covered by a water license issued previous to the passage of this Act, but not containing a reservation of such water for the benefit of the public. Any such requirement shall be held to be for a public use and purpose. The department may institute the eminent domain proceedings in its own name.
- d) The department is authorized, for the additional purpose of adequately irrigating any tract, to use, free of all charge, government-owned surplus water tributary to the Waimea river upon the island of Kauai, not covered by a water license or covered by a water license issued after July 9, 1921. Any water license issued after that date and covering any such government-owned water shall be deemed subject to the condition, whether or not stipulated therein, that the licensee shall, upon the demand of the department, grant to it the right to use, free of all charge, any of the surplus water tributary to the Waimea river upon the island of Kauai, which is covered by the license and which the department deems necessary for the additional purpose of adequately irrigating any tract.

Any funds which may be appropriated by Congress as a grant- in-aid for the construction of an irrigation and water utilization system on the island of Molokai designed to serve Hawaiian home lands, and which are not required to be reimbursed to the federal government, shall be deemed to be payment in advance by the department and lessees of the department of charges to be made to them for the construction of such system and shall be credited against such charges when made.

4. **All rights conferred on the department by this section to use, contract for, or acquire the use of water shall be deemed to include the right to use, contract for, or acquire the use of any ditch or pipeline constructed for the distribution and control of such water and necessary to such use by the department.**
5. Water systems in the exclusive control of the department shall remain under its exclusive control; provided that the department may negotiate an agreement to provide for the maintenance of the water system and the billing and collection of user fees. If any provision or the application of that provision is inconsistent with provisions contained in this section, this section shall control.

Water systems include all real and personal property together with all improvements to such systems acquired or constructed by the department for the distribution and control of water for domestic or agricultural use. [Am Aug. 1, 1956, c 855, §§2, 3, 70 Stat 915; am L 1963, c 207, §§2, 5(b); am Const Con 1978 and election Nov. 7, 1978; am L 1981, c 90, §10; am L1984, c 36, §1; am L 1990, c 24, §1]

Cross References

Board of land and natural resources empowered to prepare irrigation plans, see §§174-5, 174-6.

Law Journals and Reviews

Native Hawaiian Homestead Water Reservation Rights: Providing Good Living Conditions for Native Hawaiian Homesteaders 25 UHL. Rev. 85.

Case Notes

Although the Hawaii administrative rules denominate aquifer- specific reservations of water to the department of Hawaiian home lands, such a limitation for purposes of water resource management does not divest the department of its right to protect its reservation interests from interfering water uses in adjacent aquifers. 103 H. 401, 83 P.3d 664.

Insofar as the commission on water resource management, as the agency authorized to administer the state water code, determines the contents of the Hawaii water plan, which includes the designation of hydrologic units and sustainable yields, and the commission's "interpretation of its own rules is entitled to deference unless it is plainly erroneous or inconsistent with the underlying legislative purpose", it is within the commission's authority to limit reservations of water to specific aquifers. 103 H. 401, 83 P.3d 664.

Where commission on water resource management failed to render the requisite findings of fact and conclusions of law with respect to whether applicant had satisfied its burden as mandated by the state water code, it violated its public trust duty to protect the department of Hawaiian home lands' reservation rights under the Hawaiian Homes Commission Act, the state water code, the state constitution, and the public trust doctrine in balancing the various competing interests in the state water resources trust. 103 H. 401, 83 P.3d 664.

Where commission on water resource management's findings supporting its conclusion that the proposed use of water would not interfere with department of Hawaiian home lands' reservation rights under this section failed to address whether the proposed user had adduced sufficient evidence with respect to the impact of the proposed use on the department's reservation in the adjacent aquifer system, commission erred in concluding that proposed user had met its burden under §174C-49 to obtain a water use permit. 103 H. 401, 83 P.3d 664.

Excerpt from the Ko`olau Water Use and Development Plan, DHHL Maui Island Plan:

The Hawaiian Homes Commission adopted its Maui Island Plan as the overarching planning document in 2004. The Department of Hawaiian Homelands (DHHL) East Maui planning region encompasses three tracts totaling 985 acres: Ke`anae, Wākiu, and Wailua. All three tracts are within the Hāna Community Plan designated Area. However, only Ke`anae (150.6 acres) and Wailua tracts are within the Ko`alau ASEA, covering 242 acres the State Land Use Commission has mostly zoned Agriculture, with a very small percentage zoned Conservation. The County zoning and Community Plan designations for the lands is Agricultural. For the Ke`anae tract, Two acres of community use is proposed on the makai property, and 32 three- acre agricultural lots are proposed on 57 acres of the mauka property. The chosen DHHL project for the Wailua tract proposes 28 acres of subsistence agricultural use, 52 acres of General Agricultural use and 10 acres of Conservation.⁴⁷

Excerpt from the Central Water Use and Development Plan DHHL Water Resources:

Due to the extensive Department of Hawaiian Homelands (DHHL) land holdings and their plans to further develop the area for Native Hawaiian habitation and farming activities; adequate water supply is becoming increasingly important for Native Hawaiians to resettle and facilitate their cultural practices in the area. DHHL lands are occupied by Native Hawaiians who are assumed to live the full-range of traditional Native Hawaiian cultural practices based on their ability to implement the knowledge of their heritage. Upcountry Maui (Kēōkea/Waiohuli, Ulupalakua, Kualapa) has over 6,000 acres of DHHL lands.

The Makawao-Pukalani-Kula Community Plan section, "Identification of Major Problems and Opportunities of the Region Problems," cites "limited development of water resources and distribution system to meet the needs of the region as a primary concern," and notes that "The proper allocation of water resources is considered essential to encourage the development of Department of Hawaiian Home Lands (DHHL) parcel."⁴⁸

Kēōkea/Waiohuli – Priority Tract

According to the DHHL Maui Island Plan, with adequate water and funding, this area has the potential to be the largest homestead region on Maui. Over 6,000 acres of DHHL land are

⁴⁷ Ko`olau WUDP, P. 43

⁴⁸ Central WUDP, Page 30

located below Kula Highway on the slopes of Haleakala. A 70-unit farm lot subdivision at Keōkea was planned prior to the *Maui Island Plan*. A second phase of 343 residential lots can be implemented using allocations from the existing water system if planned in the mid-section of the tract between existing residential lots and the Keōkea farm lots. An additional 768 residential lots are proposed for future residential homesteads at Waiohuli pursuant to the development of an on-site production well.

Kualapa

Located along Kula Highway south of Ulupalakua near Kanaio, this tract does not have immediate development potential due to infrastructure constraints. The water system is old and undersized and is not able to accommodate any further growth; and extensive off-site improvements would be needed to support residential development.

Kula Residence Lots

The Kula Residence Lots subdivision is located in the northern portion of the Keōkea-Waiohuli homestead area (yellow on the accompanying map). The subdivision will include a total of 420 lots developed to Rural Residential half-acre standards.

Future DHHL Development

DHHL has long range conceptual plans for about 1,100 more residential lots in the area below the latest developments. The future subdivisions are envisioned to include community facilities, a school site, parks, archaeological preserves, and open space. These future plans are dependent on the development of water, wastewater, road improvements, and funding. The timeframe for these developments is beyond 2020.

Excerpts from Draft EIS Relating to DHHL Lands:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for K kea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its K kea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.⁴⁹

⁴⁹ DEIS, Page 2-4

Failure of the State to Fulfill Fiduciary Responsibility:

Whether the State of Hawaii is meeting its fiduciary responsibility to Native Hawaiians regarding their claim to revenue sharing as granted by the State Constitution needs to be resolved.

In *Nelson v. the Hawaiian Homes Commission*, six individual plaintiffs filed a first amended complaint alleging that the State Defendants and DHHL had violated Article XII, Section 1 of the Hawai'i State Constitution. That constitutional provision states the following:

The legislature shall make sufficient sums available for the following purposes: (1) development of home, agriculture, farm and ranch lots; (2) home, agriculture, aquaculture, farm and ranch loans; (3) rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved; (4) the administration and operating budget of the department of Hawaiian home lands; in furtherance of (1), (2), (3) and (4) herein, by appropriating the same in the manner provided by law.

Plaintiffs alleged that the State had failed to make sufficient sums available to DHHL for the four purposes enumerated above. In Count 2, the Plaintiffs alleged that DHHL breached its trust duties to its beneficiaries by failing to request sufficient sums from the State. The progress of this case and the appeals provides insight into the dissatisfaction of beneficiaries with regard to revenue sharing.

Case is attached as Appendix 11.

Ownership Considerations & Reversion of Crown Lands with Cessation of Sugar Cane:
*Excerpts from: Wai o ke Ola He Wahi Mo'olelo no Maui Hikina, A Collection of Native Traditions and Historical Accounts of the Lands of Hāmākua Poko, Hāmākua Loa and Ko'olau, Maui Hikina (East Maui), Island of Maui, Kumu Pono Associates*⁵⁰

At the request of Garret Hew, Manager of East Maui Irrigation Company, Ltd. (EMI), Kumu Pono Associates conducted a two phased study of cultural historical resources in the lands of Hāmākua Poko, Hāmākua Loa, and Ko'olau, in the region of Maui Hikina (East Maui), Island of Maui (an area that includes some 73 individual ahupua'a or native land divisions). The study included— conducting detailed research of historical records in public and private collections (Volume I); and conducting oral history interviews with individuals known to be familiar with the cultural and natural landscape, and history of land use in the Maui Hikina study area (Volume II). This study was conducted in conjunction with the Water License Application of the East Maui Irrigation Company, Ltd., to the Board of Land and Natural Resources of the State of Hawai'i.⁵¹

Page 444-445 (Appendix 8)

In 1928, J.H. Foss (Chief Engineer, East Maui Irrigation Company), submitted a paper to the Public Lands Commission as a part of the appraisal process associated with General Lease No.'s 1134 (Honomanu), 974 (Hamakua), and 276 B (Spreckels). In the paper, Foss provided readers with a historical summary of the history of the East Maui Ditch System and Water Licenses:

A brief history of Government Water Licenses on East Maui will give a background for the details to be considered in these three appraisements. There are in all five such licenses, two in addition to the above three. All of them are now somewhat interwoven due to the fact that the transportation of water from each is handled by one and the same general ditch system; accordingly, the two additional ones...are Keanae, No. 1706; and Nahiku, No. 520 B...

...Honomanu License, No. 1134, is a new license which replaced the original lease on Honomanu lands. At the expiration of said lease all improvements thereon, and in connection therewith, reverted to the Government. The present Honomanu License also provides that improvements thereon and in connection therewith revert to the Government...

The present ownership of the ditches transporting water from the Honomanu and Spreckles Hamakua Licenses is somewhat involved. The original ditches on the Honomanu lease are the Spreckels and M. Louis, which are to a great extent still in use. They reverted to the Government at the expiration of the Honomanu lease in 1908. The Koolau Ditch which also crosses the Honomanu License, but which was built under the Keanae License in 1903 1904, reverted to the Government at the expiration of that license in 1925. Thus all the aqueducts in the land of Honomanu are now, and have been for several years, the property of the Government.

⁵⁰ <http://www.ulukau.org/elib/collect/maly6/index/assoc/D0.dir/book.pdf>

⁵¹ Wai o ke Ola He Wahi Mo'olelo no Maui Hikina, Page 3

The Spreckels, Center, Lowrie and New and Old Haiku Ditches are still the property of East Maui Irrigation Co^[19]. Those portions of those ditches located on Government land may automatically become the property of the Government at the expiration of the Spreckels License in 1938, although the Spreckels License does not provide for reversion of improvements.

Those portions of the new and old Hamakua Ditch, located upon Government land, reverted to the Government with the expiration of the Hamakua (1916) and Keanae (1925) Licenses respectively; and accordingly have been the property of the Government for some time. The Wailoa Ditch, which is located on the Spreckels Hamakua License, is still the property of East Maui Irrigation Co., but those parts which are on Government land will revert to the Government at the expiration of the Spreckels Hamakua License in 1938...

Page 448-449 (Appendix 9)

September 7, 1876

C.T. Gulick, Interior Department;

to Messrs. Castle and Cooke, Agents Haiku Sugar Co. : .

..I am directed by His Excellency the Minister of the Interior to say in reply to your Application of the privileges, that the Government will grant to the Haiku Sugar Co., Alexander and Baldwin, James M. Alexander, The Grove Ranch Plantation and Thomas Hobron, and their respective and several successors heirs and assigns the license to take water from the streams named in the application and to carry the same over all Govt. lands intervening between the said Streams and the remotest of the lands to which it is now desired to carry said water for the period of twenty (20) years from date of acceptance at the rate of One Hundred Dollars (\$100.) pr Annum, upon condition:

1st: That a sufficient ditch, canal or other waterway shall at once be commenced and finished in a reasonable time.

2nd: That this grant shall in no way interfere with the rights of tenants upon said Government streams or lands.

3rd: Nor shall it in any way affect the right of the Government to grant to any person or persons the right to take water (not to interfere with the water herein granted) from the same or other streams to be carried over the same land or lands for any purpose whatsoever, and if need be through the ditch or canal to be constructed by these grantees, provided however that during the said twenty years the supply of water, a right to take which is herein granted, shall not be diminished by act of the Government.

4th: That at any time during the said period the government may purchase the said ditch canal or other water way, * (* upon payment of the actual cost thereof only) and in case of said

purchase will continue to furnish water to these grantees and their respective and several successors, heirs and assigns at a just and reasonable rate not to exceed that paid by other parties taking water from such ditch or waterway.

Page 486-489 (Attached Appendix 10)

[Extension of Lease from the 30th of Sept. 1893, to the 30th of Sept. 1916]

August 10, 1893 J.A. King, Minister of the Interior; to Haiku Sugar Company and Paia Plantation Company]

An Indenture made this 10th day of August, A.D. 1893, by and between His Excellency, James A. King, Minister of the Interior of the Hawaiian Islands, acting with the advice and consent of the Executive Council of the Provisional Government of said Islands, of the first part, and The Haiku Sugar Company and the Paia Plantation Company, Corporations established and existing under and by virtue of the laws of the said Islands, of the second part;

Whereas said parties of the second part hold a certain grant of the right to take water for purposes of irrigation from certain streams on the Island of Maui, and the right of way across certain Government Lands for a ditch to convey such water, which said grant is contained in an Indenture made by and between W.L. Moehonua, Minister of the Interior, acting with the consent of the King in Cabinet Council, of the first part, and the Haiku Sugar Company, James M. Alexander, Alexander and Baldwin and T.H. Hobron, of the second part, dated Sept. 30th, 1876, of record in the Hawaiian Registry of Deeds in Lib. 49, Fols. 167 172, which said grant is for the term of twenty years;

And Whereas said Indenture was, on the 7th day of Oct. 1878, modified by agreement of the parties, of record in said Registry in Lib. 57, Fols. 343 345, the parties of the second part, then associated under the name of the Hamakua Ditch Company, on consideration of the waiver by the party of the first part of the right reserved to purchase said ditch and appurtenances, agreeing to pay the sum of Five hundred Dollars (\$500.00) per annum rental;

And Whereas the Paia Plantation Co. has acquired all of the rights of said James M. Alexander, Alexander and Baldwin, and T.H. Hobron in said Indenture;

And Whereas said indenture contains a covenant for renewal for a further term of twenty years, provided the rights therein granted should be granted to any person or corporation...

Honolulu, July 25, 1898. Senator Hocking; to J. F. Brown Esq., Agent of Public Lands:

...Mr. H. P. Baldwin, Mr. W. F. Pogue and myself have entered into a preliminary agreement to erect a sugar mill at Nahiku, Island of Maui, for the purpose of manufacturing sugar from cane grown and furnished by parties who have taken up government lands at Nahiku, Island of Maui, and also to pipe and ditch water along the heads of said lands, providing we can acquire the right from the Government to do so.

Therefore providing the Company be incorporated under the law of Hawaii, will you grant it a license to use the water on said lands for the above named purpose, providing it be used for the benefit of all parties owning land in said tract, and depriving no person of their rights to water, we would necessarily like the privilege for a long term of years if you should decide to grant this license will you please state the terms... [HSA, F.O. & Ex, Public Lands Commission – 1898]

August 2, 1898 Land License No. 520 B Public Lands Commission;

The water from this tract shall be used for the general benefit of the owners and occupiers of lands within the Nahiku tract of Public Lands Map No. 20, for irrigation and domestic purposes, and for cane fluming and general Mill and Plantation purposes, and no person or persons shall be deprived of the use of any water to which they would have been entitled in the absence of this License.

...The right as regards the use of the land to be occupied under this license, is limited to such operations as are required for ditching, building dams, flumes and for the utilization and conveyance of water, no rights of taking timber except for construction of such dams, flumes and c, and no rights of using the said tract for other purposes being granted.

At the expiration of the term of this license all flumes, pipes and improvements for conducting said water shall remain upon said land and shall revert to the Government.

Per the Office of Hawaiian Affairs, Kipuka database, of the 30,000 acres of land on the Tax Map Key numbers listed in the Draft EIS, 18,000 are crown lands.⁵²

<u>TMK</u>	<u>Acres</u>
2/1-2-004-005	1576.07
2/1-1-004-007	3821
2/1-1-002-002	13007.1
2/1-1-001-044	3371.97
2/1-1-001-005	2121.85
<u>2/2-9-014-001, 005, 011, 012, 017</u>	<u>6630.84</u>
Total acres	30,528.83

⁵² <http://kipukadatabase.com>

TMK: 2/1-1-002-002

- 35,740 acres owned by the State DLNR-DOFAW considered Ko`olau Forest Reserve
- 13,518 acres of Crown Land

1895 Land Use: Kalo laukea Description⁵³:

These three lands adjoin each other and extend along the coast from Makoloaka point where Wailua joins the government land of Waiohue on the east, to a ravine called Napuumahoenui at the extreme westerly end of Honomanu, a distance of about 6 1/2 miles. These tracts are mostly mountain and wood land, and full of deep and precipitous gulches. At Keanae there is quite a stretch of low table land where considerable taro is cultivated and where the most of the natives reside. Has a very good landing. In the Wailua valley all of the lower portion is rice land, about 75 acres. On these lands there is at all times a great abundance of water. The land of Honomanu is valuable for its water, from which a large section of the Hawaiian Commercial and Sugar Co.'s land is supplied. Wailua contains about 3000 acres, Keanae 11,148 and Honomanu 3260.

- Land Patent Grant 10879 from the Territory of Hawaii to Amalia K. Bodnar 7.75 acres dated 9/4/40.
- Royal Patent Grant #3223 awarded to Kaakuamoku and Kailiau for 120 acres in 1879, Book 15

TMK: 2/1-1-001-044 Honomanu

- 4270 acres of Crown Land
- Same description as above
- 1895 Land use: Valuable Water Rights

⁵³Source: laukea, Biennial Report, 1894

V. Considerations RE: Purchasing & Maintaining EMI System

The Maui County Board of Water Supply Temporary Investigative Group has conducted interviews and discussions with various individuals in the community with knowledge, expertise and experience who have increased TIG members’ understanding of the scope, operations and maintenance of the EMI Water Delivery System as well as the costs related to the purchase or condemnation of the EMI water delivery system and the cost of its maintenance, and the purchase or condemnation of relevant Mahi Pono lands.

The BWS TIG has also reviewed various documents related to the above.

General Considerations:

In response to community research, the BWS TIG learned that there are many members of the community who have been considering the option of purchasing the East Maui water delivery system and/or watersheds and had already begun their own analyses prior to the establishment of the TIG.

For example the East Maui H2O Roundtable discussed the following:

<p>East Maui H2O Roundtable, convened by Sustainable Living Institute of Maui, June 2018, Break-out group on Financing strategies for East Maui Watershed and Water systems.</p>	<p>Participants: <i>ALLISON COHEN (Nature Conservancy)</i> <i>GLADYS BAISA (DWS DIRECTOR at the time)</i> <i>CARL FREEDMAN (economic analyst on water and energy policy)</i> <i>DAVID FISHER (Economist and business advisor)</i> <i>CAROL REIMAN- A&B Public relations head</i> <i>WARREN WATANABE- Maui farm bureau</i> <i>LUCIENNE DE NAIE - Sierra Club Maui/ east Maui resident</i> <i>HUGH STARR- ag property specialist/ water researcher</i></p>
<p>Price tag depends on needed systems improvements and community priorities. Costs associated with watershed and ditch system (not County water treatment systems) include:</p> <ul style="list-style-type: none"> • ditch system upkeep and maintenance • watershed management and restoration activities • monitoring gear / programs • alternative water sources • needed studies and plans • system modifications/ expansions • OHA/DHHL share 	
<p>Funding Sources:</p> <ul style="list-style-type: none"> • System users • Private sector funding • International & local bonds • Social impact investors interested in : <ul style="list-style-type: none"> • sustainability • education • carbon offset • adopt a tree programs 	<ul style="list-style-type: none"> • NGO investors (charitable foundations) • Corporate sponsors • County • Federal appropriations (climate impact mitigation funds?) - USFWS/ USDA/ EPA- GRANTS • USGS programs and projects • State - Legislature plus CWRM/ OHA/DHHL

Determine **pricing structure** for portion of funding coming from potential water system users:

- DWS: potable system & ag parks
- A&B or successor- farming leases /hydropower
- taro farmers/ kuleana farmers
- Hui partition holders in Huelo
- Maui Gold pineapple
- Ranches
- Recreational users PUC would need to regulate the prices set & PUC bases decision on cost, not “value”

SIDEBAR: AG WATER RATES

- Charging 3 cents per 1000 gal , 100 mgd would cost \$1 million
- Upcountry farmers currently pay \$1.10/ 1000 gal at the County Ag park
- State irrigation district (Hawaii Island) charges 20 cents/ 1000 gal.

Condemnation Requirements (Per Maui County Corp Counsel):

In an August 2, 2017 transmittal from then-Corporation Counsel Pat Wong to then-Council Member Elle Cochran, advice is provided on the process for initiating condemnation proceedings by the County of Maui. Mr. Wong cites the following sections of the Hawaii Revised Statutes (HRS):

§46-1.5 (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so;

§46-61 Eminent domain; purposes for taking property. Each county shall have the following specific powers: To take private property for the purpose of establishing, laying out, extending and widening streets, avenues, boulevards, alleys, and other public highways and roads; for pumping stations, waterworks, reservoirs, wells, jails, police and fire stations, city halls, office and other public buildings, cemeteries, parks, playgrounds and public squares, public off-street parking facilities and accommodations, land from which to obtain earth, gravel, stones, and other material for the construction of roads and other public works and for rights-of-way for drains, sewers, pipe lines, aqueducts, and other conduits for distributing water to the public; for flood control; for reclamation of swamp lands; and other public uses within the purview of section 101-2 and also to take such excess over that needed for such public use or public improvement in cases where small remnants would otherwise be left or where other justifiable cause necessitates the taking to protect and preserve the contemplated improvement or public policy demands, the taking in connection with the improvement, and to sell or lease the excess property with such restrictions as may be dictated by considerations of public policy in order to protect and preserve the improvement; provided that when the excess property is disposed of by any county it shall be first offered to the abutting owners for a reasonable length of time and at a reasonable price and if such owners fail to take the same then it may be sold at public auction.

§46-62 Eminent domain; proceedings according to chapter 101. The proceedings to be taken on behalf of the county for the condemnation of property as provided in section 46-61, shall be taken and had in accordance with chapter 101, as the same may be applicable.

§101-13 Exercise of power by county. Whenever any county deems it advisable or necessary to exercise the right of eminent domain in the furtherance of any governmental power, the proceedings may be instituted as provided in section 101-14 after the governing authority (county council, or other governing board in the case of an independent board having control of its own funds) of the county has authorized such suit by resolution duly passed, or adopted and approved, as the case may be. The resolution, in the case of the city and county of Honolulu or an independent board thereof, shall, after its introduction, be published in a daily newspaper with the ayes and noes, once (Sundays and legal holidays excepted) at least three days before final action upon it, and in the case of any other county or an independent board thereof, be published in a newspaper with the ayes and noes, at least one day (Sundays and legal holidays excepted), before final action upon it.

§101-14 Plaintiff. The attorney general of the State may, at the request of the head of any department of the State, or as otherwise provided by law, institute proceedings for the condemnation of property as provided for in this part. Any county may institute proceedings in the name and on behalf of the county for the condemnation of property within the county for any of the purposes provided in this part which are within the powers granted to the county.

Section 4-2(7) of the Revised Charter of the County of Maui (1983) states: "Resolutions authorizing in eminent domain shall be adopted as provided by law."

Maui County Code Section 3.44.O15(E) states: "The council may authorize proceedings in eminent domain by resolution. Any proceedings so authorized are subject to the requirements of chapter 101, Hawaii Revised Statutes."

The remainder of HRS chapter 101 sets forth the process for completing condemnation proceedings. In summary, after the Council passes a resolution, the County is required to file a complaint in Circuit Court and provide notice of the action to all owners of the property. The County will be required to compensate the property owners for the property taken, and if the parties cannot agree on compensation, the Court will hold a trial on the issue.

Prior to drafting the resolution, the County should obtain a title report for the property, as well as an appraisal of the property's value. The appraised value of the property should be included in the County's budget. The resolution itself should authorize the Department of Corporation Counsel to initiate condemnation proceedings, specifically describe the property, state the public purpose proposed for the property, and authorize Corporation Counsel to deposit money equivalent to the estimated value of the property to obtain immediate possession, if applicable. It is also advisable for the Council work closely with the County department that will be responsible for oversight of the property throughout the condemnation proceedings.

In your request, you discuss the possibility of condemnation of the structures but not the land within the proposed property. Owning the structures without owning the land would limit the County's control of the land to effectuate the purpose of the condemnation.

Please see Appendix 5 for a copy of the transmittal.

In an email request from Board of Water Supply Chair and TIG Vice Chair Shay Chan Hodges, Corporation Counsel Caleb Rowe, stated the following:

"In general, when a condemnation occurs, the governmental body undertaking the condemnation must pay "fair market value" of the property taken. The Hawaii Supreme Court in its decision in Honolulu v. Collins (attached) specifically states that the value of use of water derived from the land shall be considered in a determination of fair market value ("this land has a special value as water producing land. The owners, therefore, are entitled to compensation according to its value as such.")

The calculation of damages would be a little weird for this one since the system is technically on state land and the rights to the water are entirely speculative (dependent on the RP from BLNR). Still, some consideration of the value of water would likely be deemed appropriate in a determination of fair market value."

See Appendix 6 for a copy of Honolulu vs. Collins.

Fair Market value of the EMI System:

Market Value in 2018	Based on one-year old purchase price
1. Price paid by Mahi Pono:	\$5,442,333.48 per the purchase and sales agreement with Mahi Pono. Only 50% paid to date. ⁵⁴
2. Assuming that Mahi Pono did its due diligence and assuming that A&B did not sell the EMI System to Mahi Pono for a concessionary price at less than fair market value contrary to the interests of its shareholders, \$5.4 million was a fair price for the system last year. Has the value increased or decreased since the time of purchase?	Due to the reduction in agriculture, there has been reduced use of the aqueduct system over the last three years, and thus a reduction in EMI staff (as confirmed by Kamole Treatment Plant staff). It is likely that changes in delivery system use combined with less maintenance of ditches and the watershed would have a negative impact on the overall condition of the system.
Increased Value if EMI/Mahi Pono Receives 30-Yr Lease	A&B/Mahi Pono Purchase and Sale Agreement
1. The sale by A&B of its property and EMI interest to Mahi Pono required that A&B shareholders be informed of material details of the transaction through the filing of SEC Form 8-K. A&B's 8-K filing prescribes a minimum value of \$62 million of Mahi Pono obtaining state water leases with sufficient water to fully implement its plan through a requirement that Mahi Pono be rebated this amount to reflect the diminished value of the property purchased from A&B if the water leases with sufficient allocation are not granted. As false and misleading statements made in SEC filings are prohibited by law, it is reasonable to assume that the information provided in A&B's 8-K regarding Mahi Pono's acquisition is accurate	Seller will make a one-time rebate to Buyer of \$31,000,000 of the Purchase Price if at any time prior to the earlier of (i) the date State Leases are obtained as provided in Section 2.7(d) below or (ii) eight (8) years after the Closing Date: (x) EMI or Seller is legally prohibited from delivering the Minimum Water Amount (defined below) to Buyer, and (y) the amount of water that EMI is then not legally prohibited from delivering to Buyer is less than Buyer's actual surface water need at that time, as determined by Buyer in its sole discretion, exercised in good faith, to meet the irrigation requirement of its then existing crops or crops planned for the upcoming 24 months in the area served by East

⁵⁴ A&B/Mahi Pono, Purchase and Sales Agreement and Escrow Instructions, Page 4, <https://www.sec.gov/Archives/edgar/data/1545654/000119312518354682/d664171dex101.htm>

and based on proper due diligence.	Maui surface water (a " <u>Productivity Loss Event</u> ." On the date one year after the initial Productivity Loss Event described in subsection (a) (the " <u>Initial Productivity Loss Event</u> "), Seller will rebate to Buyer an additional \$31,000,000 of the Purchase Price for a total reduction in the Purchase Price of \$62,000,000, unless by that date the Initial Productivity Loss Event is cured. ⁵⁵
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Legal Ownership of the EMI System:

As noted under "Ownership Considerations" on Page 32, per the contractual agreements between EMI and the Hawaiian government, the East Maui Irrigation System should have reverted back to the Hawaiian government. **A thorough legal analysis of the current ownership needs to take place immediately.**

Assessed Value of the EMI System Relative to Repairs Needed:

Per the Central WUPD: Public concerns were voiced over the EMI system falling into disrepair, inefficiencies due to unlined storage reservoirs and system losses. In the East Maui Streams Contested Case, system losses were assessed to about 22 percent. As sugarcane cultivation is transitioned to other uses, EMI continues to maintain the system and keeping the main ditches functional even with reduced volume flow. CWRM in its June 2018 decision encourages HC&S to seek to make its storage and delivery of water to its fields more efficient to increase the productive yield of the irrigation water from East Maui.⁵⁶

On December 20, 2016, the Department of Water Supply commented on the early consultation for the preparation of the EIS for the proposed 30-year lease. Some comments included:

The costs of the EMI System management, capital improvement, system operation and maintenance are important in assessing the future viability of the system and should be disclosed by the applicant. Relevant information include[s]:

The current and projected costs of the EMI system management, capital improvements, system operation and maintenance.

Although the DEIS, Page 548, refers to some repair and maintenance, there does not appear to be any explicit plans or expenditures cited in the EIS:

⁵⁵ <https://www.sec.gov/Archives/edgar/data/1545654/000119312518354682/d664171dex101.htm>, Page 6

⁵⁶ Central WUPD, Page 104

Implementation of the CWRM D&O may require modification or complete removal of specific diversion in the EMI Aqueduct System. Mason Architects prepared a Historic Structure Assessment report for the subject Water Lease. It was determined that the EMI Aqueduct System is eligible to be placed on the NRHP. Historically significant structures to be modified or removed will be documented photographically and with location sketch plans conforming to the Historic American Engineering Survey (HAER) standards. Any future developments will need to be in conformance with the goals, policies, and objectives of the State of Hawai'i CZMP⁵⁷.

Assessing the current condition of the EMI System and the costs of appropriate repairs:	How would a fair appraisal be conducted?
<p>1. Comprehensive information from EMI/Mahi Pono about the condition of the delivery system would be extremely useful to the community, not just for the purposes of determining market value, but for assessing overall impacts on the ecosystem, health, safety, and traditional and customary practices.</p> <p>The BWS TIG requested a copy of a safety analysis conducted by Oceanit from EMI that might have provided valuable information about the state of the system, as well as recommended improvements. EMI/A&B declined to provide a copy of the report.</p> <p>BWS TIG requested a tour; which has not been scheduled by EMI yet.</p>	<p>Based on the draft EIS, it is unclear what the current condition of the EMI system is. One statement indicates that there WILL be maintenance but does not clarify what the current maintenance is.</p> <p><u>Page 3-15, Draft EIS:</u> "ongoing maintenance and operation of the EMI Aqueduct System is expected to take place under all alternatives, to the extent operations and maintenance of the system is financially feasible."</p>
<p>2. Appraisal Process</p> <p>Scope of Work includes details of the property to be evaluated, reason for appraisal, who is ordering, who will receive report and how it will be used. Appraiser then identifies parcels, makes physical inspection, takes measurements, pictures and creates field notes. The appraiser then makes adjustment calculations to compare subject property to similar size, zoned, special features (in the case of vacant land - it is important to note the useable land area, the utilities available on the property, road access) Appraiser identifies any and all improvements on the parcels.</p>	<p>In the case of condemnation for purposes of obtaining a water storage and distribution system for the public trust, the appraiser will need to have an MAI designation (a professional certification) in order to be able to appear in court.</p> <p>Only a handful of appraisers in Hawaii are MAIs. Hiring the appraiser with court experience would probably cost from \$25,000 to \$50,000.</p>
<p>3. From US Department of the Interior, Fish and Wildlife Service.</p> <p>Dan Pohlhemus of USFWS attended June 2018 East Maui H2O Roundtable offered the following observations on the E. Maui ditch system from recent experiences he has had doing stream surveys:</p>	<p>Dan Pohlhemus: "At the present time, there is also no water being diverted from any stream east of the Koolau Gap by the Koolau Ditch, because in that sector at least as far west as Wailuanui Stream it is stagnant or dry. EMI and Mahi Pono are only diverting what they currently need to serve Maui County, fire control, and a few limited ag customers, which all amounts to less than 30 mgd. This is easily supplied by diversions on the Wailoa Ditch</p>

⁵⁷ CZMP=Coastal Zone Management Plan

<p>" ... due to lack of maintenance, the various ditch systems other than the Wailoa Ditch (which has the highest elevation alignment and is thus of greatest use to Maui County Water) are gradually falling apart, with numerous treefalls and land slips beginning to obstruct them, and their headgate machinery rusting and deteriorating.</p> <p>"As far as I can see, neither the Lowry Ditch nor the New Hamakua Ditch are currently functional, and with each passing day it will take progressively more work and money to bring them back into service.</p>	<p>from Puouhokamoa westward, a fair number of which are still active to some degree. But there seems to be no master plan here, just EMI taking the limited amount of water they still need from whatever are the easiest diversions to maintain. Everything else will go back to the forest, as has already happened to many diversions and access roads associated with the Waiahole Ditch on Oahu. Essentially, the system is downsizing itself, although that is not all bad."</p>
<p>4. Community Members provided feedback about the condition of the EMI Delivery System and the impacts on safety at focus groups convened for the Draft EIS.</p> <p>Page 4-121, DEIS: Mr. Hau states that the EMI Aqueduct System requires mapping that shows the 388 intakes, ditches, dams, pipes, and flumes. Each diversion should be located and identified accurately with GPS coordinates. Elevations should also be recorded. The amount of water moving through the system should be measured at specific locations within the EMI Aqueduct System as well.</p>	<p>Page 4-135, DEIS: As landowners and farmers downstream of the EMI Aqueduct System, two major concerns emerged among participants. First, many reported that the EMI Aqueduct System is not maintained in a manner that was safe for people in the area and located downstream. Focus group participants said that portions of the ditch area are so overgrown with vegetation that people visiting the area are injured if they stumble upon or fall into ditches and flumes that are not readily visible. Two bridges on State land often flood in this wet season, and people cannot drive to their residences until the water level subsides. It was felt that the bridges are unsafe because of a lack of maintenance.</p> <p>Also, people who visit popular areas in the vicinity of the State Forest Reserve, such as Twin Falls (which is partially within License Area; the upper falls are within the License Area but, the area that is frequently visited is outside the License Area), and area trails, noted that these areas are subject to overgrown landscaping and flash flood conditions. Participants noted that neither EMI nor the State has participated in maintenance of the EMI Aqueduct System and trails in this area, even though this area attracts residents and visitors alike.</p>
<p>5. Examples of repairs and modifications:</p>	<p>Replace old diversion apparatus with modern diversion devices (solar powered, plus batteries) that allow established minimum flows to pass through, mauka to makai, and divert only excess water, and which allow migrating aquatic animals, plants can pass under device unimpeded both up and downstream.</p> <p>Install 24" pipes as used in mainland fracking water transport, laying the pipe in existing ditches, tunnels, flumes. This will reduce leakage to a minimum and save many mgd.; and prevent contamination of one stream with snails and other biota unique to each stream,</p>
<p>6. A formula for estimating initial repair costs is utilizing 3% of Replacement Asset Value (RAV) per year, over two years, which would total of \$12 million.</p>	<p>Page 802, DEIS: "The development and improvement of the EMI Aqueduct System over time has cost nearly \$5,000,000, compared to its modern assessment of nearly \$200,000,000 to create a comparable system."</p>

Operating Costs and Management Considerations:

In the Draft EIS, EMI provides specific current and anticipated operations costs. If a public entity purchases the EMI Water Delivery System, these figures would represent the cost of operating the system with current EMI staff in place, which would be the most efficient plan at least in the short-term. Given that the EMI system is a relatively small operation with regard to personnel, taking over management and administration of the system would be relatively straightforward.

Breakdown of Operations Per EMI/A&B:	Page 2-1, 4-150, Draft EIS: \$2.5 M Annually
In the DEIS, EMI provided total operational costs for Mahi Pono, which are quoted here. Specific operational costs are also listed, though not enough information is available to confirm how final calculations were reached.	Page 2-1, DEIS: Total costs for labor, fringe benefits, materials, professional services, taxes, maintenance, anticipated rental payments to the State for the Water Lease, and other expenses are projected to be approximately \$2.5 million per year (Munekiyo, 2019).
1. Personnel	EMI is expected to employ a staff of 17 people with a payroll of \$0.8 million. Total direct and indirect jobs is 24, with an associated payroll of \$1.1 million .
2. Operations	EMI’s operating cost (including personnel above) under the Proposed Action would be \$0.068 per kgal, for a total of \$2.2 million. (Table 4. EMI Water System Economic and Fiscal Impacts , DEIS Page 18)
3. Taxes	GET revenue would be estimated at \$37,000 while payroll tax would be \$45,400 per year
4. Payments to DHHL and OHA	\$169,300 would be disbursed to OHA and \$254,000 would be set aside for the DHHL
5. State Leases	Based on appraisal

Opportunities for Direct Cost Savings Through Improved Maintenance:

Engineering study of the EMI system that assesses the cost-benefit of mitigating 20% losses is needed.	What are the funding options available for environmental assessments?
1. Given the amount of water that is lost through leakages on a regular basis, what would the savings be of proper repair and maintenance to the owner of the system, and would that savings offset any of the R&M costs?	Koʻolau WUDP, Page 121: "...water losses due to leaks, seepage, evaporation and other inefficiencies in the treatment, conveyance, distribution and storage of water range widely depending on storage and source transmission system age, length, type and many other factors...To account for water losses and determine source needs for Upcountry, water produced, rather than water billed is used as basis to determine source needs. For the Upcountry system, water losses average 20%. "
2. What would the estimated increased availability of water to Upcountry residents be as a result of proper repair and maintenance?	
3. What would the impact be on overall East Maui stream restoration if less water needed to be diverted to supply Upcountry Maui?	

Liabilities:

Prior to the current sale of the EMI system to Mahi Pono, EMI has been operating under a “status quo” mentality with various grandfather clauses in effect. There are numerous liabilities and additional legal obligations that any new owner will need to address such as issues related to abutting landowners:

- Trespass and safety issues related thereto;
- Risks of extra water flow in storms; and
- Trees falling and other natural and man-made dangers encroaching on abutting land.

The DEIS does not contemplate a risk management plan that will be necessary to address these liabilities that Mahi Pono will be assuming when it takes full ownership of EMI and when the various grandfather clause exemptions currently enjoyed by EMI are no longer in effect.

Opportunities for Indirect Cost Savings through Mitigating Health and Safety Risks:

Health and Safety Considerations and Concerns, including Climate Crisis Impacts	In addition to direct costs, the County should look at other considerations that affect the well-being of Maui residents.
1. What are the safety concerns that would affect the community at large if the system is not properly maintained, regardless of ownership?	Page 3-14, DEIS: Impact to historic properties. Components of the aqueduct system that deteriorate and begin to fail, such as broken ditch walls or collapsed tunnels, have the potential to alter natural drainage patterns and increase erosion in downstream areas that are outside of established stream channels. These areas have the potential to contain surface and subsurface historic properties that could be affected by flooding and erosion. (Mason Architects, 2019).
2. What are the health and social effects on East Maui residents, including community benefits for intergenerational farmers returning to the valleys that have been without water for over a hundred years, if EMI Delivery system is not maintained optimally?	This would require a thorough study of the impacts of access to water on farmers and communities from a socio-economic perspective, looking at potential impacts of returns to East Maui.
3. How does maintenance of the EMI Delivery System impact Climate Crisis safety concerns with regard to flooding? (Steps to be taken regarding climate crisis mitigation over the next thirty years were not found in the DEIS although climate change is mentioned as a factor.)	Page 4-72, DEIS: Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. With several streams being within East Maui, greater, episodic rainfall could increase stream flows and possible exceed the capacity of the EMI Aqueduct System as discussed in Section 4.3.1. The Modified Lease Area alternative could present risks to public safety if unfettered public access within the License Area meant more people could be put at risk due to stream flooding.

Opportunities to Support Culturally and Community-Based Economic Development As Defined by the Community:

The EMI Delivery System and Economic Development	The County should look at how public ownership would further support value-aligned economic options as defined by East Maui residents.
1. An analysis of the economic and social value of a well-maintained aqueduct system that supports local farming beyond state laws governing stream flow standards would allow the public to support multiple stakeholder needs from a variety of perspectives.	<u>Summary, Page 58, DEIS:</u> At full development, East Maui farms would produce about 1.0 million pounds per year of taro and about 400,000 pounds per year of other crops, resulting in \$2.9 million in direct and indirect sales per year. Farms would support a total of 21 direct and indirect jobs. (Munekiyo, 2019).
2. The impact of eliminating water loss on streams and waterfalls could be looked at from the perspective of impacts on the visitor industry.	What would loss of waterfalls impact be on tourism dollars? How would a managed tourism plan that acknowledges the contributions of and impacts on residents and the natural environment look?

Economic and Other Benefits of Accountability Regarding Streams Flows:

Although legal decisions have supported the return of water to streams, there is a lack of funding for monitoring and enforcement	Public ownership of the water delivery system would provide transparency, accountability, and multiple remedy options to the public if laws are not followed.
1. As noted previously, maintaining water in the streams has an impact on the watershed. There are also local and global environmental, community, tourism, energy, food security, and cultural imperatives for being able to ensure that streams are being restored as mandated by law.	The Code (HRS § 171C-3) defines “instream use” as: beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to: <ol style="list-style-type: none"> 1. Maintenance of fish and wildlife habitats; 2. Outdoor recreational activities; 3. Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation; 4. Aesthetic values such as waterfalls and scenic waterways; 5. Navigation; 6. Instream hydropower generation; 7. Maintenance of water quality; 8. The conveyance of irrigation and domestic water supplies to downstream points of diversion; and, 9. The protection of traditional and customary Hawaiian rights.
2. If the water delivery system were publicly owned and/or controlled, there could be more opportunities and motivation for pursuing robust and authentic engagement with East Maui families regarding care of watershed and ahupua’a, including a community-based system of repair and maintenance (kuleana) to support ongoing communication and relationship building, as well as potential sources of funding for community	<u>Ko’olau WUDP, Page 15:</u> There are 36 streams in the Koolau ASEA, that are classified as perennial. Of these streams, 31 are considered continuous and 5 are considered intermittent. The CWRM database indicates that there are 323 declared stream diversions in the Ko’olau ASEA and 11 gauges, of which, only three are “active.” Most of these diversions belong to the East Maui Irrigation Company (EMI). Developing an East Maui community-based/owned system of

<p>appropriate technology, including installing monitoring devices that can withstand heavy storm floods with wireless data broadcast that accurately measure stream flow and diversion amounts.</p>	<p>watershed stewardship could be an economic and educational driver from Keanae to Kaupo, based on generations of knowledge combined with environmental and climate change educational opportunities.</p>
<p>3. If EMI/Mahi Pono is granted a 30-year lease, there will be very limited opportunities for the community to demand accountability until 2050, long after intense effects of climate change have impacted Maui.</p>	<p>Page 4-121, DEIS: Mr. Hau relayed via email that he recommends a five-year lease with constant updates due to the fact that the project description lacks information on the amount of water flowing through the EMI Aqueduct System and the actual amount of water collected at each diversion and/or ditch without the factor of climate change accounted for.</p>

Safeguarding Public Health & Community Security:

<p>In addition to weighing the cost/benefits of owning/controlling the EMI Aqueduct System in the context of providing domestic water to Maui residents, the County needs to consider the long-term benefits of having control over its water supply over the next 30 years.</p>	<p>How does control of the delivery system combined with the fact that water is a public trust support proactive access to water and system improvements?</p>
<p>If the County of Maui owns the EMI Delivery system, given that Act 126 specifically allows for the continued diversion of water to serve Upcountry Maui domestic needs, the County would be in a strong position to receive a long-term lease from DLNR. Having its own long-term lease would release the County from dependence on a private company, thereby ensuring that the County can safeguard the public health of Upcountry and East Maui residents.</p>	<p>Issuance of a long-term lease of State land from the Board of Land and Natural Resources pursuant to Hawai'i Revised Statutes (HRS) Section 171-58(c) would provide the "right, privilege, and authority to enter and go upon" state-owned license areas "for the purpose of developing, diverting, transporting, and using government-owned waters" including the right to go upon those State lands to maintain and repair existing access roads and trails used in connection with the privately owned water aqueduct system.</p>
<p>According to DWS Director Jeff Pearson at the September 19, 2019 Meeting of the Board of Water Supply, the County of Maui would not be able to apply for a revocable permit or lease unless it owned the "diversion." If he is correct in his assertion, ownership of the EMI delivery system would allow the County or another public entity such as a Public Trust Water System to be able to apply for a lease.</p>	<p>Director Pearson made this statement in response to a recommendation by Hawaii State Senator Kai Kahele that Maui County apply for a Revocable Permit and lease immediately. Per Senator Kahele, the county is a domestic water provider, its rights are constitutionally protected. If they have an RP or a long-term lease, no matter who runs the transmission system, they can always get water for Kamole. See attached Appendix #3</p>
<p>Having ownership of the system and its own lease, the County of Maui or "Public Trust Water System" would be able to protect the public interest and support public access to the area as needed. Beyond access to domestic water, there are also health and safety issues related to Climate Change for Upcountry Maui.</p> <p>As noted by the State of Hawaii, Office of Planning, "the potential adverse effects of global warming include a rise in sea levels resulting in ... the inundation of</p>	<p>Page 473, DEIS: Changes in precipitation may affect Upcountry Maui's ecosystems and communities include flooding, erosion, drought, and fire. In addition, the ability to support smaller, local farmers and increased food security would be enhanced.</p> <p>Page iii, DEIS: The Water Lease will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow continued operation of the EMI Aqueduct System.</p>

<p>Hawaii's freshwater aquifers."</p>	
<p>Any publicly-owned entity that entity owned and/or controlled the system would have access to public funding for maintenance of the system and restoration of wetlands that a private owner can't access.</p>	<p>A current example of this kind of benefit for public entities is the \$4.5 million currently allocated by the Dept of Agriculture to help restore stream access in East Maui. The DoA cannot use the funds on private lands, such as EMI/Mahi Pono property. Similarly, USDA and other funding that could be used to repair the EMI delivery system could only be accessed if the system were owned by a public entity.</p>
<p>Public ownership of the delivery system – particularly if combined with lands owned by the County of Maui – would allow for more comprehensive systems-oriented solutions to water needs by combining renewable energy, farming plans that are tailored to community needs, and efficient water systems.</p>	<p>Water and farming plans that integrate analysis of use of curtailed wind energy for water pumping in agriculture and municipal systems can reduce agricultural water needs, lower energy costs for pumping water upcountry, and potentially increase stream flows. (Examples: A Systems Approach for Investigating Water, Energy, and Food Scenarios in East-Central Maui⁵⁸)</p>
<p>Public ownership would also allow for mechanisms that require a Water Management Plan, building on the Water Use and Development Plan, but with enforcement mechanisms and funding allocations.</p>	<p><u>Page 4-145, DEIS:</u> Interviewees stressed that Mahi Pono should implement a Water Management Plan. The Plan should outline improvements to the EMI Aqueduct System, including brush fire prevention and relate water needs to specific crops.</p>
<p>Public control over water delivery systems and watershed areas would support proactive and integrated efforts to ensure an affordable and predictable supply of water.</p>	<p>Board of Water Supply, City and County of Honolulu, 2016 Master Plan, 6.2 Sustain⁵⁹ The BWS manages thousands of acres of watershed area on O'ahu to protect and preserve 212 separate potable water sources, the combination of 194 individual groundwater wells, 13 active potable water tunnels, and 5 shafts. The BWS's proactive efforts to manage and protect the watersheds include limiting access and development, combatting invasive animals and plants, promoting healthy forests, and encouraging customer water conservation to reduce the amount of water withdrawn from the environment. These BWS efforts are discussed in more detail in Section 4, Water Supply Sustainability.</p>
<p>Public or quasi-public ownership of the water delivery system would enable the public to ensure that workers are paid a living wage.</p>	<p>Jobs resulting from the use of a public trust resource such as water should pay enough for Maui residents to support their families.</p>
<p>As noted at the beginning of this document, the impetus for forming the Temporary Investigative Group grew out of the fact that Mahi Pono has been minimally responsive to community concerns and has been unresponsive to requests by the Board of Water Supply for engagement.</p> <p>Water Department Director Jeff Pearson has stated that his continued attempts to encourage Mahi Pono representatives to respond to the Water Board have</p>	<p><u>Page 4-141 of the DEIS:</u> It is recommended that interest groups, or stakeholder groups, are clearly defined so that there is recognition of who will be affected by the proposed Water Lease. Groups should include geographic communities, environmental, agriculture and business interests, and public agencies. Each group would be encouraged to reach consensus on their own needs, concerns, opportunities and possible solutions.</p> <p>It is recommended that interest groups are equitably</p>

⁵⁸<http://ulupono.com/media/W1siZiIsIjIwMTQvMTEvMTgvMjNmMjhfNDJfOTQxX0FfU3IzdGVtc19BcHByb2FjaF9mb3JfSW52ZXN0aWdh dGluZ19XYXRlci5wZGYiXV0/A%20Systems%20Approach%20for%20Investigating%20Water.pdf?sha=eea0a5f3>

⁵⁹ <https://boardofwatersupply.com/bws/media/files/water-master-plan-final-2016-10.pdf>

<p>been unsuccessful.</p> <p>Even though Director Pearson and the Maui County Administration have lobbied the State Legislature and will be lobbying the Department of Land and Natural Resources to support EMI/Mahi Pono application for a long-term lease, Mahi Pono has not been compelled to meet with the only volunteer board that advises the Mayor and County Council on matters related to water.</p> <p>Given that Mahi Pono is funded through PSP (Public Sector Pension), which “capture[s] value by integrating environmental, social and governance (ESG) factors throughout the investment process and across all asset classes,” it is surprising that community engagement, which is a key ESG value, has not been a priority for Mahi Pono.</p> <p>According to PSP’s Responsible Investment Report: “Through engagement, one can assess a community’s perceptions of the acceptability of a company’s project or local operations. In this context, community can be broadly defined to include stakeholders and interested parties well outside the immediate areas of operations, or any group or individual that can affect or is affected by the achievement of a company’s project. In other words, companies cannot operate sustainably without community support.”⁶⁰</p>	<p>represented in a “Core Working Group” that would serve as a forum for exchanging ideas and collaborative efforts, as well as provide feedback and suggestions to Mahi Pono. Each member of the Core Working Group would be expected to reach out to their own networks to extend the discussion beyond the Core Working Group. While there would likely be strong differences in perspectives and opinions, the Core Working Group would need to find ways to establish core principles, common ground and manageable solutions.</p> <p>The fundamental value that will help bring people to the same table is trust. The Proposed Action has elicited skepticism and distrust over many decades, and these feelings prevent willingness for participating in mediation and collaboration. While developing trust among the various groups will be challenging, the first step is transparency. Being open about intent, plans, and activities can begin to establish credibility and open the door to dialogue.</p>
<p>Public ownership of the EMI water delivery system would provide an opportunity to move towards reparations for the Native Hawaiian families who have not had access to their streams for over 100 years. Unlike local government, which exists to meet the needs of its citizens, a private entity – particularly one that is funded by an institutional investor with obligations to pension fund beneficiaries -- would need to develop a business plan that both maximizes revenues, while addressing environmental and cultural considerations. While this is possible, the DEIS does not describe such a plan.</p>	<p><u>Ko’olau WUDP</u>: Historically, great efforts were made to allocate water for all needs on Maui. Today, native Hawaiians are challenged with the negative consequences of resource “ownership,” with “owners” sometimes lacking sensitivity or requirements to share with others. Perhaps past strategies of sharing distribution and timing of water flows can be adopted in order for all water users to be supplied with this important resource. Consortiums of water partners have been discussed as options to ownership and management of the East Maui Irrigation water system.⁶¹</p>

Potential Sources of Public and Environmental and Infrastructural investment funds:

As noted in the table, any publicly-owned water delivery entity, whether the County or a “Public Trust Water System” would have access to public funding for maintenance of the system and restoration of wetlands that a private owner can’t access.

⁶⁰ https://www.investpsp.com/media/filer_public/documents/PSP-2018-responsible-investment-report-en.pdf

⁶¹ Ko’olau WUDP, Page 39

For example, grants and loans are available through the US Department of Agriculture, Rural Development agency for water and environmental programs. These grants are focused on populations of 10,000 or less so they could possibly apply to East Maui.⁶² The USDA’s Rural Utilities Service (RUS) provides much-needed infrastructure or infrastructure improvements to rural communities. These include water and waste treatment, electric power and telecommunications services. The US Bureau of Reclamation also provides funding for large scale water management, efficiency, and development.⁶³ There are other federal revolving loan funds with favorable terms that are designed to finance these types of water projects. And as noted in the table above, the State of Hawaii can be a source of funding, as it was in the \$11.2 million CIP Waikamoi flume replacement project. There are also a number of charitable foundations that have an interest in funding feasibility studies for municipal bond financing of environmentally beneficial projects.

Risks of Leaving Access to the Public Trust in Private Hands:

<p>The County also needs to consider the risks of an outside private equity firm with a “2 and 20” compensation structure and whose institutional funding source is seeking a net annualized return in excess of 10% controlling a significant amount of Maui water supply for 30 years.</p>	<p>Unless the existing owners make legally binding commitments, the community is at risk.</p>
<p>The DEIS is very clear that if EMI does not receive a 30-year long-term lease, EMI/Mahi Pono will not guarantee water for Upcountry Maui even though EMI/Mahi Pono has other sources of water that can be accessed for Upcountry (up to 30 mgd based on their reporting).</p>	<p><u>Page xiii, DEIS:</u> Without the Water Lease, even if EMI could find it economically feasible to continue maintaining the EMI Aqueduct System to divert non-governmental water for diversified agriculture in Central Maui, there may not be enough water to allocate much or any to the MDWS. This lack of water would exacerbate the effects of drought when other surface water sources are unreliable for the KAP and the Nahiku, this could eliminate their primary source of water. Insufficient water delivered to the County through the EMI Aqueduct System could have significant effects on health and safety of those who currently rely on that water delivery.</p>
<p>As climate change creates more uncertainty and extreme impacts on residents, based on statements made in the DEIS and the record of Mahi Pono’s parent company Trinitas in California during the California drought in 2015⁶⁴, it is imprudent to assume that Mahi Pono will be a responsible community citizen, if extreme weather reduces water availability and/or if community groups request more investment in sustainable farming and/or water conservation practices.</p>	<p><u>Page 3-11, DEIS:</u> Climate change may cause a decline in rainfall in Upcountry Maui. Any alternative that may result in less water being delivered through the EMI Aqueduct System to the MDWS for use in the Upcountry Maui Water System could increase periods of intense water shortages in Upcountry Maui.</p>
<p>As the climate crisis creates more uncertainty and extreme</p>	<p>A current and very dramatic example of a corporate</p>

⁶² <https://www.rd.usda.gov/about-rd/agencies/rural-utilities-service>

⁶³ <https://www.usbr.gov>

⁶⁴ <https://www.businessinsider.com/the-65-billion-almond-crop-is-driving-the-sharp-debate-about-california-water-use-2015-4>

<p>impacts on residents, it would be imprudent to assume that a private equity firm such as Mahi Pono with a financial incentive structure which is not aligned with the long-term public interest will take responsibility for addressing potential infrastructure damage and resource losses which will have significant impact on Maui. The DEIS makes it clear that if Mahi Pono does not receive all the public resources to which it believes that it is entitled, it may cut some or all of its water allocation to upcountry residents "which could pose long-term risks to health" (DEIS 7-5) as well as abandon agricultural fields (DEIS 6-4) and the EMI Aqueduct System. "Under such a scenario, the aqueduct system's historic resources may be found at risk for neglect from reduced or lack of maintenance, and/or possible demolition."</p>	<p>entity not taking responsibility for the potential long-term public impact of neglecting prudent infrastructure and resource management is Pacific Gas & Electric which earlier this month was forced to cut power to 800,000 households causing well over a billion dollars in economic losses in a matter of days.</p> <p>In the case of PG&E, regulatory bodies such as the California Public Utilities Commission have broad authority to implement and enforce corrective action. If Mahi Pono is granted a 30-year water lease under the proposed action, it is unclear what, if any, resourced mechanisms for accountability would be available to ensure that the public interest continued to be served for full term of the lease.</p>
<p>As noted above, PSP is likely seeking an annualized return in excess of 10% on its investment in Mahi Pono. A common approach to increasing return among private equity firms is to leverage an acquisition with a high amount of debt. As highly leveraged deals can rapidly lead to a crisis when financial projections are not met, it is important for stakeholders to have adequate knowledge of the debt structure. The DEIS does not provide this.</p>	<p><u>Page 3-6, DEIS:</u> "[A] lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in <u>establishing</u> successful diversified agricultural operations and crops that may take years to reach economic viability."</p>
<p>Perpetuation of a narrative that supports water scarcity, where one has to choose between returning water to the streams and Upcountry domestic water use and/or water in the streams versus agriculture, as opposed to one that promotes collective pro-active measures to support increasing recharge, conservation, and collaborative sharing of water resources has the potential to divide a community that currently is supportive of diverse interests and needs.</p>	<p><u>Page 4-137, DEIS:</u> "Balance" was a frequent theme among interviewees. They acknowledged that various groups need water originating from East Maui State watershed lands and felt that users should have access to water they truly need. Of note is that, regardless of one's own interest in the Water Lease, no one wanted water withheld from other groups.</p> <p><u>Page 4-140, DEIS:</u> A common theme with the Upcountry Maui residents was the continuation of reliable water service to Upcountry Maui residents, businesses and farmers. There was general appreciation for water provided by the EMI Aqueduct System. It is noted that these Upcountry Maui residents felt that East Maui agricultural and cultural practitioners should also have the water they need for their activities. They understood the need for flowing cold water in kalo cultivation.</p>
<p><u>March 2019 WUDP Draft, Water Resource Management, Strategies And Recommendations, Page 231-234:</u> #29 Research, support and use of less water consumptive crops and climate adapted crops" #30 Improve irrigation management and efficiency #32 Augment agricultural water supplies with alternative resources, #47 Diversify supply for agricultural use to increase reliability #50 "Balance existing diversions with alternative sources for agriculture to mitigate low-flow stream conditions #51 Maximize efficiencies in surface water transmission, distribution and storage</p>	<p>In terms of supporting agriculture, it is important to differentiate between export and crops for local consumption; how specific agricultural practices impact the climate crisis; whether the specific economic activity results in good jobs for Maui residents; and or whether it will exacerbate the housing crisis by importing workers.</p> <p>While Mahi Pono is technically governed by pension fund PSP's ESG (Environmental, Social, Good Governance) principles, there has been no explanation of how those principles impact decision making, nor has the company been transparent (Good Governance is the "G" in ESG).</p>

In Summary: Determining Costs and Benefits of Purchasing EMI System

- 1) Determination of legal ownership of all aspects of the EMI Water Delivery System is necessary, regardless of what the County/public decides to do.
- 2) A thorough engineering and cost analysis of the current EMI Delivery system is needed to determine the EMI System's true value as a stand-alone or partial system (and the various permutations thereof), in conjunction with improvements. This analysis needs to provide reliable information about:
 - What parts of the system are usable and what is the cost and value of repair, particularly in light of the "natural downsizing" currently taking place as a result of neglect;
 - Based on the domestic water use needs in Upcountry Maui and the condition of various aspects of the EMI system, what would be the most cost-effective strategy for partial purchase and use of the EMI system if there is one?
 - What are the options for condemning parts of the system and/or small tracts of land?
 - What are the benefits, if any, of purchasing specific ditch systems, such as only the Wailoa Ditch System?
- 3) Annual costs of maintaining the EMI System; including an assessment of liability issues;
- 4) Potential revenues based on domestic water and agricultural water sales;
- 5) Potential positive impacts of control of the revenue stream of Wailoa Ditch and/or the entire EMI system, such as:
 - Estimates of socio-economic benefits of increased farming in East Maui based on stakeholder control of instream flows;
 - Estimates of potential cost savings from improved health, safety, and other socio-economic indicators for East Maui residents who rely on the streams for farming and other cultural and recreational practices;
 - Estimates of the value of improved environmental stewardship based on modifications to the appurtenances and increased stream flow;
 - Estimates of potential increased water production from substantial watershed investments, combined with analysis of socio-economic benefits to East Maui of such an investment (with ancillary cost savings to other county departments as a result thereof);
 - Estimates of economic development and support of farming based on decreasing water rates for local farmers and reducing infrastructure costs for local residents with regard to water meters and subdivision outlays.
- 6) Risk of allowing a private equity firm and foreign pension fund to control a significant amount of Maui's water, which is a Public Trust, and to have outsized influence over Maui's water, agricultural industry and food security for 30 years.

VI. Alternative Water Sources

In addition to considering the viability and costs of purchasing parts or all of the EMI Aqueduct System, the TIG was tasked with assessing alternatives to ownership of the system that might also provide water security for Maui residents.

Pi`iholo and Olinda Water Treatment Facilities:

It is important to remember that with regard to Upcountry Maui, the Maui Department of Water Supply relies on three surface water sources:

- Wailoa Ditch, which is on state lands, and for which the current 30-year land lease is being sought by EMI/Mahi Pono, and
- Two MDWS higher elevation aqueducts that transport water to Olinda and Kula, owned by the County but maintained by EMI, under a contractual agreement originated under the 1973 East Maui Water Agreement and subsequent agreements.

MDWS and EMI diverts water from Ko`olau ASEA, conveyed to treatment plant facilities located in Ko`olau ASEA (Pihiolo Water Treatment Facility) and the Central ASEA (Olinda and Kamole Weir Water Treatment Facilities). (See page 15 of this report)

The two upper aqueducts are owned by the County and provide the majority of the water to Upcountry Maui. In 2018, they provided a total of 4.61mgd, compared to 1.5mgd at Wailoa.

Per the DEIS, the other two surface water sources are not supplied by the EMI Aqueduct System, but are fed by streams located on lands previously owned by A&B and now owned by Mahi Pono. Under a contractual agreement with EMI, these waters are diverted and transported by two MDWS high-elevation aqueducts (Upper and Lower Waikamoi Flumes) that are also situated on land that was previously owned by A&B and now owned by Mahi Pono, located above the License Area (Ha'iku Uka Watershed). These aqueduct systems deliver water to the MDWS' Olinda and Pi'iholo Water Treatment Plants (See Figure 2- 4). These two high elevation aqueducts are maintained by EMI. However, these sources are not part of the proposed Water Lease being addressed by this DEIS as they are outside the License Area. The water received at the higher elevation is preferred by the MDWS because it can be delivered to users at higher elevations without the cost of pumping from a lower elevation source like the Wailoa Ditch.⁶⁵

⁶⁵DEIS, Page 2-10

Potable Groundwater Development:

From Ko`olau WUDP:

The amount of groundwater that can be developed is limited by the amount of natural recharge and aquifer outflow that contribute to streamflow and to prevent seawater intrusion, established as sustainable yield. Because delineation of aquifer sectors and systems in some cases are based on limited hydrologic information, areas for potential groundwater development must be assessed on its own merits to determine any additional needs for hydrologic studies and interaction with surface water and other sources.

Understanding potential impact of climate change adds to uncertainty in long-term groundwater availability. The primary responsibility to determine potential impacts on water resource availability lies with the State CWRM who in turn relies on studies and predictions by the scientific community and other agencies. Water purveyors need guidance how to mitigate and adjust to potential changes in groundwater availability.

Other constraints on groundwater availability include access and cost. Conveyance from high yield aquifers in remotely located watersheds to growth areas can be difficult and expensive due to topography and distance. Basal well development at high elevations, such as Makawao aquifer above 1200 feet would result in high pumping costs, just in terms of pumping water from the water table to ground elevation.

Potential effects of groundwater development on streamflow and on the quality of water pumped from existing wells in a region can be evaluated by robust hydrologic studies and models. Joint funding and collaboration between the municipal and private purveyors, CWRM and the U.S. Geological Survey would focus studies to maximize benefits and prevent conflicts in water development and designation. Aquifer systems in Ko`olau are not extensively studied, as indicated by CWRM's confidence rating in establishing sustainable yield. Haiku aquifer has sufficient yield to serve regional demand and support development of planned growth areas outside Ko`olau. It is recommended that CWRM prioritize hydrological studies and groundwater modeling in Haiku and Honopou regions to guide private and public well development and ensure potential impacts on surface water is addressed first.⁶⁶

Additional points from Central WUDP:

Other constraints on groundwater availability include access and cost. Conveyance from high yield aquifers in remotely located watersheds to growth areas can be difficult and expensive due to topography and distance. The Central ASEA consists of the driest regions on Maui, with annual rainfall generally less than 50 inches. Population centers and growth rely on groundwater imports from the Wailuku ASEA and the Ko`olau ASEA where rainfall and groundwater recharge are substantially higher.⁶⁷

⁶⁶ Ko`olau WUDP, Page 104

⁶⁷ Central WUPD, Page 105

<p>In order to determine whether development of wells in East Maui should be considered as an alternative to surface water, yield, aquifer capacity, and energy cost need to be studied.</p>	
<p><u>Ko`olau WUPD, Page 46:</u> The Ko`olau ASEA includes 149 wells, of which 131 are considered "production" wells, the remainder (18) are classified as "unused" (9), observation (2), and seven classified as "other" that do not produce water. The 131 production wells include County municipal (4), private public municipal (3), domestic (59), agricultural (crop use [39]), agricultural (1), agricultural (aquatic plants & animals use [1]), one agricultural (livestock and pasture use), three agricultural (ornamental & nursery plants use), 15 irrigation, and seven irrigation (landscape/water features use).</p> <p>CWRM pumpage reports for 2014 show that pumpage for the Ko`olau ASEA was approximately 0.92 MGD with County Municipal wells accounting for 0.878 MDG (95.81 percent of total sector pumpage), Municipal Private Public wells accounting for 0.015 MDG (1.63 percent of total sector pumpage), Agriculture wells accounting for 0.014 MGD (1.53 percent of total sector pumpage), Domestic wells accounting for 0.008 MGD (0.86 percent of total sector pumpage), and irrigation wells accounting for 0.0017 MGD (0.19 percent of total sector pumpage). However, it is likely that domestic use is underreported.</p>	<p>Page 4-59, DEIS: While no groundwater is transferred from the Ko`olau Aquifer Sector, surface water is conveyed from the sector to the Central Aquifer Sector via the EMI Aqueduct System. Since surface and groundwater interchange depends on the underlying geology, the increase in surface flow since the cessation of sugar cultivation in 2016 also contributes to an increase in groundwater in East Maui.</p> <p><u>Central WUDP, Page 112:</u> Strategy #4 Explore East Maui well development in combination with Makawao aquifer basal groundwater to meet projected demand on the MDWS Upcountry System. Initiate a hydrologic study to determine any negative impact on existing ground and surface water sources, stream flow and influences from dikes. Potential yield is more than the needed 6.3 mgd (potentially in addition to development for the MDWS Central System). Lead agencies would be CWRM and MDWS and hydrologic study to be completed by USGS.</p> <p><u>Page 3-9, DEIS:</u> There may be a connection between decreased stream diversions and increased groundwater. However, the current pumpage of wells in the four aquifers in East Maui (Ha`iku, Honopou, Waikamoi, and Ke`anae of the Ko`olau Aquifer Sector) is well below the SY (Sustainable Yield.)</p>
<p>Wells are more expensive than surface water due to energy costs for development and pumping, but costs can be mitigated with solar, wind, hydro-pumped storage, particularly if the Department has access to land.</p> <p>In order to comprehensively compare costs, all factors described previously in this report related to repair and maintenance of the EMI Aqueduct System, combined with the environmental, safety and cultural benefits of EMI ownership would need to be compared to well development costs.</p> <p>Any well development plan should include scenarios that utilize renewable energy, the costs of the development of which would also need to be calculated. However, agreements with MECO and the benefits of bringing the State to its goal of 100% renewable energy by 2045 would also need to be factored in.</p> <p><u>Per DWS comments on early consultation for EIS on 12/16/16:</u> Although the non-consumptive use of water</p>	<p><u>Page 3-2 to 3-3, DEIS:</u> "a single well is normally allowed to pump about 1 mgd within its area"</p> <p>Given current figures regarding Kamole Treatment Plant needs, 3 to 7 wells would need to be developed. Each well site would have an estimated development cost of \$6 million. (Akinaka, 2019).</p> <p>The cost of planning, obtaining permits for, and constructing 7 wells would be approximately \$13 million. Added to this cost would be transmission pipes, additional pumping and related energy consumption to reach higher elevations, and reservoirs.</p> <p><u>Central WUDP, Page 110:</u> The 2013 MDWS study estimated well development at 2,050 foot elevation and related booster pump and transmission line to about \$8.4M and a 20-year cost of \$2.90 per 1,000 gallons for development of 1.2 mgd pump capacity, normally run at 0.8 mgd source capacity. The study only evaluated a scenario with one well in Makawao aquifer and in</p>

<p>involved in hydroelectric uses is likely difficult to appraise, the EIS should describe the extent to which hydroelectricity is generated, including the associated costs and revenues.</p>	<p>combination with well development outside Makawao aquifer.</p> <p><u>Central WUDP, Page 110:</u> Explore new basal well development in the Makawao aquifer to accommodate growth Upcountry and add reliable new source. Potential yield is up to 3 mgd. Lead agency is MDWS, DLNR and/or public/private partnerships.</p>
<p><u>Central WUDP, Page 109:</u> Adding 20% to projected 2035 demand of 8.53 mgd for Upcountry is 10.23 mgd. With the addition of the Priority List demand of 7.3 mgd, total demand is 17.54 mgd. Available source capacity is 11.2 mgd, which would require the balance 6.34 mgd to be developed. (includes 7.0 Surface Water)</p>	<p><u>Page 3-17: DEIS:</u> If the MDWS has to replace the 7.1 mgd supplied by the EMI Aqueduct System, and in addition develop to the 7.95 mgd projected to be needed to meet future water demands, the MDWS would need to develop 15.05 mgd of new water source. It is estimated that the life- cycle unit cost to develop those necessary wells and reservoirs for Upcountry Maui is \$38 per kgal. This would translate to \$2.6 billion, compared to \$1.2 billion under the Proposed Action.</p>

VII. Alternatives to Purchasing the EMI System

<p>While community ownership of parts or the full EMI Delivery System, as well as ownership of key land parcels are straightforward avenues for ensuring that the Maui community benefits from and controls Maui water as a public trust, other remedies should also be explored.</p>	<p>What are the legal actions that can be taken besides condemnation? Are there other vehicles for accomplishing community goals?</p>
<p>Negotiate new Domestic water use Agreements with EMI/Mahi Pono:</p> <p>As noted in the DEIS, “EMI agreements with the MDWS provide that water supplied to the MDWS is contingent upon the Water Lease being issued...Currently the MDWS is being charged 6¢ per 1,000 gallons to receive East Maui surface water for the KAP and other Upcountry Maui farm areas.”</p> <p>In the past, EMI was required to maintain the roads and trails, maintain the delivery system, and leave enough water in streams for downstream domestic water users and Kuleana users, and they were required to post a \$100,000 performance bond.⁶⁸</p>	<p>One key way to safeguard the public is to negotiate new agreements with EMI/Mahi Pono that:</p> <ol style="list-style-type: none"> 1. Remove contingency of access to the public trust on a private company receiving permits/leases from BLNR. 2. Require a minimum level of repair and maintenance of the Ditch System by EMI/Mahi Pono to ensure the health and safety of the community. 3. Require that EMI/Mahi Pono reduce leakages in the delivery system to optimize water availability, thereby increasing amount of water going to the Kamole Treatment Plant, and decrease the amount of water diverted from streams, and increase amount of water for agriculture. 4. Require a minimum investment in the care of the watershed and other environmental responsibilities, that includes partnerships with stakeholders. 5. Require EMI/Mahi Pono to address liabilities.
<p>State Irrigation System</p> <p>The Agricultural Resource Management Division manages state irrigation systems at Hoolehua, Kahuku, Waimanalo, Waimea and Honokaa-Paauilo, two on Oahu, two on the island of Hawaii, and one on Molokai. The ARMD also manages Honokaia, Paauilo, Puu Pulehu, Waimea, Waimanalo, and Kualapuu Reservoirs. Arguments in favor of a state irrigation system include the fact that much of the system is on state land, and the state has the bonding to fund big capital improvements.</p>	<p>Concerns re: limited funding of Dept. of Agriculture and the requirement of requesting funding from the state legislature every year, particularly since Molokai Rep Lynn DeCoite is the only farmer in the legislature.</p> <p>However, due to the diversity of stakeholders and the potential revenue sources, the state would be managing a different kind of economic water system.</p> <p>To adequately study this model, legislators, stakeholders, and the Department of Agriculture would need to research this option in the context of the various issues raised in the report.</p>

⁶⁸ Land Lease Bearing, General Lease #3578, 1959, Pages 3,4, 15,16, Contracts under Native Hawaiian Land and Water Rights

VIII. Calculations for Initial Purchase Price, Estimated Expenses, and Potential Revenues for a Public Trust Water System

There are numerous variables to consider with regard to acquisition costs, maintenance, and potential revenues. These calculations are presented to provide a framework for beginning the process of determining a financial structure that would feasibly allow a Public Trust Water System to provide the best service to Maui residents in the short- and long-term based on the various considerations already presented in this report. While the purchase price of \$5.4 million is very clear, an appraisal could affect the condemnation price and would provide a better estimate of short-term improvements.

Initially, the TIG was interested in considering the cost of acquiring just the Wailoa Ditch System, which feeds into the Kamole Treatment Plant. However, given the number of variables in determining the percentage of the system represented by Wailoa, which could be as high as 70%, this analysis is focusing on the entire system, where numbers are more readily available, specifically the total purchase price and the expected water used by Mahi Pono.

Initial Purchase Price and Cost to Restore EMI Ditch System:

Initial Purchase Price	Amount	Notes
Includes 15,000 acres ⁶⁹ of land parcels and ditches utilized for the EMI system.	\$5,442,333.48 (possibly less any depreciation since 12/17/18 purchase due to neglect.)	Based on MP purchase price for full system, (only half has been paid.) ⁷⁰
Estimated costs to restore the EMI ditch system and to correct deferred maintenance.	\$12 million over two years.	Based on 6% of Replacement Asset Value (RAV) of \$200 million, which is the modern system replacement cost cited in the EMI Draft EIS
Total Purchase Price plus substantial improvements:	\$17.4 million	Improvements from the beginning

Bond Payments:

If the EMI System is acquired by the County or State, properly structured bond financing could be utilized for acquisition and restoration of the system. Borrowing \$17.4 million at 3.75% over thirty years would require debt service payments totaling \$966,985 annually.

Value of Purchasing System Prior to Mahi Pono Obtaining a Long-Term Lease:

If Mahi Pono is able to obtain a 30-year lease, the company will likely try to argue that the EMI aqueduct system has a higher value with a long-term lease than its purchase price of \$5.4 million. There are clear indications from the December 17, 2018 purchase agreement with

⁶⁹ <https://mauitime.com/news/business/mahi-pono-purchase-agreement-lots-of-legalese-with-a-few-tasty-nuggets/>

⁷⁰ <https://www.sec.gov/Archives/edgar/data/1545654/000119312518354682/d664171dex101.htm>

Alexander & Baldwin that a core component of Mahi Pono's investment strategy is the monetization of public trust water resources as evidenced by A&B's obligation to rebate Mahi Pono \$62 million of the purchase price if Mahi Pono does not obtain a water lease allocation of at least 30 mgd. (See sales agreement)

Value of the System Based on Water Delivery Rights:

Maui County Department of Water Supply potable water rates for agricultural users: **\$1.10 per 1,000 gallons for use over 15,000 gallons per month.**

Maui agricultural users who use less than 15,000 per month pay residential rates (\$2.05 to \$3.90 per 1,000 gallons.)

Agricultural Use rates per 1,000 gallons on the Big Island are assessed as follows:

In addition to standby, power cost, and energy CIP charges, a consumption charge will be applied to all agricultural use customers as follows:

Up to 5,000 gallons, .93 cents

5,001-15,000 gallons: \$2.01

Over 15,000 gallons: \$1.27

State Agricultural Rates range from .20 to .50 cents per 1,000 gallons with an additional acreage assessment fee from .36 cents to \$9.37 cents per acre per month.

Per the Organisation for Economic Co-operation and Development report on Water Pricing in the United States⁷¹:

In summary, irrigation costs and prices are rising in most regions of the United States, due to a combination of increasing scarcity, changes in public preferences regarding water allocation among competing uses, increasing budget scrutiny in the national and state legislatures, rising energy prices, and increasing awareness of climate change and the potential implications for rainfall and the availability of surface water resources. These issues likely will continue encouraging public officials to utilize water pricing and other market-based incentives to motivate further improvements in water use efficiency in agriculture and other sectors.

Some of the public investments in irrigation in the United States and other countries have involved large expenditures that governments have not fully recovered from project beneficiaries over time. The subsidies implicit in the lack of cost recovery have gained the attention of citizens and legislators concerned with public budgets, resource allocation, and the off-farm impacts of irrigation and drainage in some areas.

⁷¹ <https://www.oecd.org/unitedstates/45016437.pdf>

Many observers agree that irrigation will play a major role in providing sufficient food for the world's increasing population, but many also wish to see the full costs of irrigation reflected in farm-level irrigation water prices (Merrett, 2002). Accurate prices can promote irrigation efficiency within agriculture and increase the likelihood of achieving economic efficiency across the sectors that compete for limited water resources.

...Looking forward, farmers in the United States and elsewhere must adjust to rising energy costs and increasing water scarcity. While the outlook for agricultural prices is uncertain, recent increases in food prices suggest that crop prices might be notably higher in some years. Higher crop prices will contribute to higher land prices, just as subsidies for irrigation water have done historically. From a water management perspective, higher land prices are helpful in promoting farm-level crop and technology decisions that generate higher values per unit of irrigation water. Thus the impacts of irrigation subsidies that once encouraged farmers to plant low-valued crops and to minimize water management efforts, likely will be negated in future by rising land prices and increasing water scarcity.

According to the Draft EIS, Page 2-8:

With the issuance of the Water Lease under the Proposed Action, the EMI Aqueduct System would divert only the maximum allowable amount under the CWRM D&O from streams within the License Area, which is estimated to be approximately 87.95 mgd. The EMI Aqueduct System is estimated to divert an additional 4.37 mgd from the point that it leaves the License Area at Honopou Stream and collects water from streams on privately owned land to its last diversion at Maliko Gulch. Thus, an estimated total of approximately 92.32 mgd would be conveyed to supply the MDWS for users in Upcountry Maui, Nahiku, and the agricultural fields in Central Maui.

According to the Draft EIS, Page 2-18:

The Mahi Pono farm plan assumes the following: **The total surface water available for use after system losses is estimated to be approximately 65.88 mgd.**

Based on maximum delivery of water and current agricultural and domestic water rates charged to Maui County farmers and residents, the highest potential annual agricultural revenue that can be derived from the 65.88 mgd is:

Convert 65.88 mgd to kgal (1,000 gallons)	Convert to kgal per year (365 days)	If water were delivered at current agricultural rates (\$1.10 per 1,000 gallons)
65,880 kgal	24,046,200 kgal per year	\$26,450,820

Water System Operations Costs:

There will be variances in operational costs depending on whether the water delivery system is managed by a private, public, non profit, or quasi-public entity.

Or estimates below for maintenance and total expenses are calculated at \$10 million higher than Mahi Pono's expenses, based on how they are described in the EMI DEIS.

Per the DEIS, Mahi Pono's \$2.5 million in operations costs includes maintenance as well as water leases, but does not appear to include annual monitoring and restoration of the watershed. We calculate an additional \$3 million per year for maintenance and \$6 million for the watershed.

Estimated Annual Expenses	Amount	Notes
Annual Operating Costs	\$2.5 million	Per the Draft EIS, \$2.5M includes labor, fringe benefits, materials, professional services, taxes, maintenance, anticipated rental payments to the State for the Water Lease, and other expenses
Annual Improvements, maintenance, and system risk management	\$3 million	1.5% of Replacement Asset Value (RAV) of \$200 million (EMI DEIS estimate of full system replacement cost)
Annual Watershed Monitoring, Maintenance, and Restoration	\$6 million	In 2020, DWS and nonprofits allocated a total of \$2.69 million to East Maui watersheds. We recommend adding \$6 million to bring total watershed expenditures to \$8.69 million annually.
Debt Service on \$17.4 million 30-year municipal bond (3.75% interest)	\$1 million	Annual \$966,985 payment
Total Estimated Annual Expenses	\$12.5 million	

Annual operations cost, including yearly improvements, maintenance and risk management along with watershed monitoring and restoration, plus annual debt service results in an estimated \$12.5 million in total annual expenses.

As noted above, watershed monitoring is not accounted for by EMI/Mahi Pono and annual improvements are minimal (included in \$2.5 million in operations) so totals for both expense categories could be reduced somewhat if needed.

Potential Revenue Streams:

In terms of estimating revenues, factors such as stream restoration, seasonal water flow variations, the actual payments to the state for four leases, plus additional needs by Upcountry residents, the Kula Ag Park and the new Kula Ag Park, and the water meter list would impact how much of the maximum \$26 million in water value could and should be recouped.

Additionally, grants and other support that a public or quasi-public entity could access from public and private sources could impact expenses. Furthermore, a pro-active entity could seek out additional private investment or municipal investment in renewable energy systems to address electricity costs associated with Upcountry pumping and domestic water treatment, thereby impacting expenses.

The table below therefore only provides an example of how revenues could be collected to pay for the \$12.5 million in annual expenses, which includes the 30-year municipal bond debt service payment. As noted above, there are many variables, including water rates and stakeholder interests that would affect how the revenue streams should be structured in order to be of the highest benefit to the community in the short- and long-term.

Thus, the example below is NOT a recommendation on how revenues should be collected, but instead one example of how the purchase and operation costs could be recouped.

Notes on Assumptions:

Light Grey Column:

- For this scenario, it is assumed that the Public Trust Water System would continue to contract with the Maui County Department of Water Supply to deliver water from the Kamole Treatment plant/Wailoa Ditch at the same rates estimated by EMI in the DEIS. Thus, "2030 water service fee rate is estimated to be \$0.10, which has been calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, EMI would receive an estimated \$268,000 in 2030 from the MDWS."
- The total number of gallons per day currently being contracted by MDWS from EMI is already excluded from the 65.88 that Mahi Pono stated that it needs in the DEIS.
- Thus, neither the revenues nor the water use are included in the total calculations.

Dark Grey Column

- The 5.5 mgd shown for new Upcountry water meter users is the average of the additional 3.7 – 7.3 mgd estimated demand on the Upcountry system as a whole if the full water meter list were fulfilled, per the Central Water Use and Development Plan. However, since significant amounts of Upcountry water come from the higher elevation aqueducts that transport water to Olinda and Kula, 5.5 mgd is a high estimate.

- Upcountry agricultural users are often impacted by drought restrictions. An additional 2 mgd allocated to them is added to this table in consideration of the need for dependable water availability. This is a somewhat arbitrary number as studies would need to be conducted to determine how best to support these farmers.
- Since the delivery of the additional Upcountry Water would be added to the current delivery by MDWS, revenues from both of these columns would be absorbed by MDWS, from which appropriate operational, pumpage, and water treatment expenses would be allocated.
- Therefore, although 7.5 mgd of the water volume is subtracted from the 65.88 mgd available water supply, the revenues would be the same rate that EMI/Mahi Pono will be charging for the current water delivery to upcountry users, and thus would only add \$273,750 to the Public Trust Water System revenue stream.

Upcountry Users, including domestic, agriculture, and Ag Parks, based on MP estimate for 2030 (.10 per Kgal ⁷² per DEIS)	Additional water delivery to Upcountry Ag users, based on MP estimate for 2030 (.10 per Kgal per DEIS)	Priority List water meter users, based on MP estimate for 2030 (.10 per Kgal per DEIS)	Central Maui Ag Users – Recommended reduced rate of \$.95 per kgal (DWS charges \$1.10 per kgal presently) MGD is low end for large ag user	Total Water Delivery Revenues (Excludes \$268K Upcountry Ag and domestic use already allocated to WDS). MGD total includes added upcountry water delivery	Increased Stream Flow (In addition to current CWRM D&O)	Net Annual Income (Subtract \$12.5 Million Annual Expenses)
7.3465 mgd	2 mdg	5.5 mgd	40 mgd	47.5 mgd	(18.38)	
\$268,000	\$73,000	\$200,750	\$13,870,000	\$14,143,370	\$0	\$1,643,750

As stated in the Draft Water Use and Development Plan and the Draft EIS, if repair and maintenance are conducted at proper levels, available water could increase by at least 20% or 13.18 mgd. This additional water could be returned to the stream or added to the water supply for farmers, increasing revenues.

Purchase of the whole EMI Delivery System and Mahi Pono land:

Access to Mahi Pono land in addition to the EMI Water System would allow the Maui community to implement a comprehensive Water Management Plan that includes care of the watersheds, comprehensive support for East Maui cultural practices, renewable energy options, supporting proactive and integrated efforts to ensure an affordable and predictable supply of water combined with flexibility with regard to revenue generation that is not dependent on water consumers. Various regulations relating to renewable energy production, as well as issues such as affordable housing, and how best to ensure that agricultural practices do not negatively impact climate, while also providing food security, provide justifications for purchasing substantial land parcels in addition to the EMI Water Delivery System.

⁷² kgal=1,000 gallons

IX. County Bidding on a Long-Term Lease

On May 2, 2019, Hawaii State Senator Kaiali'i Kahele wrote to Maui County Mayor Michael P. Victorino, and stated the following:

*In light of these developments, I would highly recommend that the County of Maui and DWS immediately submit a water lease application to the DLNR. A copy of the Request for State Lands Application Form is attached for your convenience. Doing so now will provide the Board of Land and Natural Resources ample time to review and issue a revocable permit to the County of Maui and DWS by the end of this year so that Maui County secures its own, independent authority to continue to provide its residents with access to diverted surface water imported from state lands in East Maui via the EMI aqueduct system. Domestic water use is a protected "public trust purpose" and I am confident that as the necessary application requirements are satisfied, the County of Maui and DWS will secure a long-term water lease from the State of Hawai'i.*⁷³

HRS 171-58 c describes the bidding (Auction) process, which includes an Environmental Impact Statement and the joint creation of a watershed management plan. A state lease is subject to Chapter 343 (requiring EIS) and HRS 171-58 describes the jointly created (Lessee/Lessor) watershed management plan prescribed by the BLNR.

Excerpts below (full section attached as Appendix 12)

§171-58 Minerals and water rights. (a) Except as provided in this section the right to any mineral or surface or ground water shall not be included in any lease, agreement, or sale, this right being reserved to the State; provided that the board may make provisions in the lease, agreement, or sale, for the payment of just compensation to the surface owner for improvements taken as a condition precedent to the exercise by the State of any reserved rights to enter, sever, and remove minerals or to capture, divert, or impound water.

...(c) [Repeal and reenactment on June 30, 2019. L 2016, c 126, §4(1).] Disposition of water rights may be made by lease at public auction as provided in this chapter or by permit for temporary use on a month-to-month basis under those conditions which will best serve the interests of the State and subject to a maximum term of one year and other restrictions under the law; provided that:

⁷³ Appendix 3

...(2) Any disposition by lease shall be subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session next following the date of disposition; and

(3) After a certain land or water use has been authorized by the board subsequent to public hearings and conservation district use application and environmental impact statement approvals, water used in nonpolluting ways, for nonconsumptive purposes because it is returned to the same stream or other body of water from which it was drawn, and essentially not affecting the volume and quality of water or biota in the stream or other body of water, may also be leased by the board with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution.

... (e) Any new lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan. The board shall prescribe the minimum content of a watershed management plan; provided that the watershed management plan shall require the prevention of the degradation of surface water and ground water quality to the extent that degradation can be avoided using reasonable management practices.

(f) Upon renewal, any lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not renew any lease of water rights without the foregoing covenant or a watershed management plan. The board shall prescribe the minimum content of a watershed management plan; provided that the watershed management plan shall require the prevention of the degradation of surface water and ground water quality to the extent that degradation can be avoided using reasonable management practices.

X. Example Governance Structures

Page 4-140, DEIS: Another theme, expressed primarily in the Kula / Pukalani focus group, was that water is a public trust, and should not be controlled by a single private corporation. They suggested a restructuring of public utilities to include a water utility that would be administered similar to the current electricity in the public utility structure. Further, profit made from use of this public trust should be invested in public need.

In addition to the various considerations described in the last 70-plus pages, consideration of the pros and cons of the various governance structures is recommended.

For example:

Governance structure	Pros	Cons
Shareholder owned (Example, A&B)	<ul style="list-style-type: none"> • Significant access to capital and human resources 	<ul style="list-style-type: none"> • Objectives of shareholders are often not aligned with the public interest
Private Equity controlled (Example, Mahi Pono)	<ul style="list-style-type: none"> • Potential to facilitate growth and innovation • Access to various sources of capital 	<ul style="list-style-type: none"> • Relatively high cost of capital • Financial incentive structure which is misaligned with the long-term public interest • Potential financial distress with broad impact if acquisition is heavily leveraged. • Absentee ownership and foreign governance
Co-op	<ul style="list-style-type: none"> • May have access to Rural Development funding • Align stakeholder interests 	<ul style="list-style-type: none"> • Strength of leadership may vary based on outcome of board elections. • Local population might be unengaged or uninterested in water co-op management
Municipal Water Authority	<ul style="list-style-type: none"> • Low cost of capital • May benefit from access to tax exempt debt financing • Public accountability • Could lower rate water rates for local farmers and fund watershed restoration and management 	<ul style="list-style-type: none"> • Potential difficulties in recruiting employees with adequate technical skills needed to run water authority • May be subject to political interference.
Hybrid (private sustainable business corporation with majority government ownership)	<ul style="list-style-type: none"> • Public / private ownership could provide "best of both worlds." • Government ownership can present "halo" effect for raising capital • Potential for both equity and debt • Exempt from civil service restrictions 	<ul style="list-style-type: none"> • Potential political interference. • Possible conflicting incentives between entities on the board. <p>Uncommon ownership structure may result in greater legal complexity and stakeholder confusion</p>

<p>Independent Public Water Authority</p>	<ul style="list-style-type: none"> • With well designed and implemented governance structure, would allow for optimized delivery and system reliability, coordinated planning in sync with public interest. 	<ul style="list-style-type: none"> • Requires establishment of independent entity. • Possible need for charter amendment • Potential challenges in raising capital
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Given the amount of information needed to serve the public purpose, and the importance of coordinating various public entities (Department of Water Supply, Wastewater, Environmental Management, and Energy Commissioner) with the activities of private purveyors, Department of Hawaiian Homelands (DHHL) and Office of Hawaiian Affairs (OHA), as well as diverse stakeholders, from native Hawaiian taro farmers to Upcountry domestic and agricultural water users, this Temporary Investigative Group recommends that Maui County thoroughly research how best to create a public governance model with bonding authority, hereinafter referred to as the "Public Trust Water System (PTWS)."

The TIG has researched some of the steps necessary for creating a Public Trust Water System. These steps include, but are not be limited to:

- 1) Outlining the legal requirements for creating the PTWS with bond authority and determining whether it would be regulated by the Public Utilities Commission (PUC);
- 2) Determining whether a charter change would be necessary and how such a change fits into the overall timeline of purchasing EMI and obtaining bidding rights;
- 3) Identifying potential private and public partners, if appropriate, including investors, public funders, and foundations;
- 4) Developing a design for the governance infrastructure that embeds transparency, accountability, and commitment to environmental, cultural, and community values, with a focus on decision-making taking place in the affected communities.

The County will need access to:

- ✓ Legal expertise about how to create new water utility with bonding authority,
- ✓ Financial and real estate expertise to evaluate feasibility and to estimate a fair cost of acquisition,

In order to ensure maximum accountability, the Public Trust Water System would need to include very strong mechanisms for ensuring oversight by diverse stakeholders, with priority given to DHHL, kuleana water rights, riparian rights, and traditional and customary native Hawaiian access rights. Furthermore, hearings and other engagement processes need to take place in the affected communities.

XI. Recommendations and Conclusion:

At the conclusion of its investigation, the Temporary Investigative Group shall:

- a. Present recommendations to the Board of Water Supply regarding the feasibility of the purchasing or condemnation of the EMI Water Delivery System and, if necessary, the purchase or condemnation of relevant Mahi Pono lands, including the structure of the governing entity that would have authority over the system, and/or
- b. Other strategies for ensuring that the people of Maui County have authority over the delivery of water, which is a public trust.

1. Primary Considerations with Regard to the Public Trust:

As noted in the Scope of the Temporary Investigating Group, the primary objective of this body was to determine how best to ensure that the people of Maui have authority over the delivery of water, which is a public trust.

In making this determination, TIG members examined:

- **Needs of East Maui residents and taro farmers and**
- **Needs of upcountry domestic and agricultural water users.**

The TIG also considered short-term needs as well as long-term impacts of climate change, including ensuring maximum availability of water within the context of the realities of climate crisis impacts in the next 5, 10, 15, 20 years and longer; and how those impacts would affect water supply and the safety of residents, thereby affecting **the public's access to water in the future, specifically:**

- 1) Watershed Protection;
- 2) General storage, wastewater, and other conservation options;
- 3) Renewable Energy and battery storage, including solar, wind, and hydro (including wastewater use);
- 4) Improved maintenance of water systems to reduce and eliminate water loss;
- 5) Integration of the above with agricultural recommendations that support food security and soil regeneration (with labor and affordable housing considerations).

2. Other Considerations Re: Serving the People of Maui:

- **Environmental Considerations Not Directly Related to Water Security;**
- **Native Hawaiian Land and Water Rights;**
- **Support of Beneficial Agriculture;**
- **Community Control of Where the Water Goes;**

- **Maintaining a Reasonable Cost of Delivered Water;**
- **Support of Economic Development for Residents.**

Hawaiian land and water rights also included examining:

- 1) Complying with DHHL requirements, including intent as well as the letter of the law;
- 2) Supporting Native Hawaiian customary practices for social justice and environmental reasons in addition to DHHL requirements.

It was determined that in order to ensure that all of these considerations are taken into account and integrated into a comprehensive, binding, and well-funded water plan that balances source development, surface water use, support of Hawaiian communities, and long-term maintenance of the aquifer, the following principles need to be followed:

- **Communication among and within government entities;**
- **Utilization of existing research and data, as well as funding of additional up to date research;**
- **Transparency by all government and private entities involved in water production and delivery;**
- **Accountability of all government and private entities involved in water production and delivery;**
- **Mechanisms that ensure accountability to ALL stakeholders, including decision-making in and by affected communities.**

3. Recommended Immediate Actions:

Based on all the information available to the TIG at this time, the Temporary Investigative Group is convinced that in order to protect the public's health, safety, and well-being in the short- and long-terms, actions need to be taken immediately to utilize legal and financial vehicles to secure the public's control of the EMI Water Delivery System.

A. County Application for a Long-Term Lease:

Maui County should immediately apply for a long-term (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas, situated at TMK Nos. (2) 1-2- 004:005, 007 (por.), 1-1-002:002, 1-1-001:044, 1-1-001:050, 2-9-014:001, 005, 011, 012, 017 in the Makawao and Hana Districts, on the island of Maui.

The above action would be valuable on its own, in terms of supporting the next step, as well as working in tandem with "Recommended Near-Term Actions" below.

B. Re-negotiate Current Contracts with EMI/Mahi Pono

Maui County should immediately re-negotiate a new contract with EMI/Mahi Pono that does not require that EMI/Mahi Pono obtain a Revocable Permit or Lease in order for the Kamole Treatment Plant to access Wailoa Ditch waters. This lease could also include requirements that address the various issues raised in this document from repair and maintenance of the system to native Hawaiian stream rights to investment in watershed protection and addressing liability issues.

By applying for a long-term lease, the County would be better positioned to re-negotiate the contract with EMI/Mahi Pono. Excluding corporation counsel personnel costs, this option would be relatively straightforward and would not be cost prohibitive. (See current Lease Appendix 13.)

However, this option would require enforcement on the part of the County, which would only be realistic if the County were willing to fully utilize its powers and responsibilities to protect the public interest. Furthermore, long-term solutions are needed to ensure the well-being of Maui residents.

4. *Recommended Near-Term Actions:*

As outlined under “Governance Structures” and described in more detail previously, because the financial incentive structure of a private equity-controlled water delivery system is misaligned with the long-term public interest, it would be imprudent to assume that the “Primary” and “Other Considerations” described above will be addressed by Mahi Pono.

Therefore, the TIG recommends that the County of Maui exercise its powers of eminent domain as soon as possible to begin the process of supporting acquisition of the system.

Furthermore, if the County of Maui is interested in facilitating community control of the EMI Aqueduct system and meeting the multiple needs of stakeholders, acquiring the system at a price close to the \$5.4 million paid by Mahi Pono in December 2018 is essential. As noted previously, if Mahi Pono obtains a 30-year water lease, the private equity fund will likely argue that the EMI aqueduct system has a value higher than the original purchase price. (Mahi Pono’s sales agreement with A&B states that the water lease is worth a minimum of \$62 million.) Acquiring the system in the near term will thus increase the chances of minimizing long-term debt.

5. Additional Recommendations for Long-Term Stewardship of the Public Trust:

In order to evaluate the most cost-effective and comprehensive solutions that address the urgent issues described in this report and to facilitate purchasing the EMI Aqueduct by a Public Trust Water System, the Temporary Investigative Group recommends that the Maui County Council and Mayor plan on taking the following steps:

Evaluate Capital Expenses Of Acquisition And Modernization

- ✓ Contract engineering studies of the current condition of the EMI Delivery System;
- ✓ Obtain reliable data regarding elevations and the amounts of water moving through the 388 intakes, ditches, dams, pipes, and flumes;
- ✓ Obtain cost estimates for repair and maintenance as well as alternate modifications, such as installing pipes in open ditches and flumes and modern diversions that support connectivity for streamlife;
- ✓ Determine the amount of the EMI Aqueduct and possibly other water systems that are connected to the Kamole Weir, as well as watershed lands that would be optimal for the most efficient short- and long-term delivery of water to the public, with maximum sustainability of the aquifer;
- ✓ Draft a plan for the County to acquire existing land, easements, and infrastructure by eminent domain, using bond financing.

Research Forward-Thinking Revenue and Expense Models

- ✓ Contract additional studies that build on current research regarding the measurable impact of watershed restoration on increased availability of water;
- ✓ Develop models and estimates regarding potential costs of installation of renewable energy systems to support treatment facilities, uphill transmission, and/or well pumping, along with energy savings;
- ✓ Develop models and estimates of hydro-pumped energy creation and storage utilizing water and wastewater;
- ✓ Determine the water rate fee structure that allows a reasonable rate of return to the investors, estimates of fees collected from the Department of Water Supply, Mahi Pono, A&B, residents, farms, and other commercial users. (If the structure created is regulated by the Public Utility Commission (PUC), the PUC will approve a fee structure that allows a reasonable rate of return to the investors to recover the capital expenses of acquisition and modernization, plus operating costs, and watershed restoration.)
- ✓ Develop a risk management plan that addresses liabilities that a new owner will assume when the various grandfather clause exemptions currently enjoyed by EMI are no longer in effect.
- ✓ Work with the East Maui community to create models for community stewardship and educational programs that operate the EMI system in the long-term.

Philanthropic support is available for the funding of some of these studies and models.

6. In Conclusion:

Determining the most efficient and effective way to ensure that the public water trust is managed and controlled by stakeholders is of the utmost urgency, given the current stressors on the water systems that serve Maui residents, residents' diverse needs, and the impending realities of the climate crisis.

Furthermore, because of the risks that will be borne by Maui residents and the County of Maui if a private entity controls the EMI Aqueduct for thirty years (which is the current stated goal of Mahi Pono/EMI), combined with the benefits of purchasing the system before any private owner has obtained a long-term water lease, the benefit of purchasing the EMI water delivery system in the near-term is much higher than it would be further in the future.

It is therefore incumbent on those who represent the interests of Maui residents to determine the most cost-effective way to achieve true control of access to water by the public as soon as possible.

This TIG believes that ownership of the EMI Water Delivery system by the people of Maui – in the form that is most cost-effective, accountable, environmentally responsible, transparent, and meets the needs of the island's diverse stakeholders, in particular native Hawaiians – will ultimately be the only way to guarantee that the public trust is maintained and remains safely in community hands.

The TIG therefore recommends that the County of Maui take immediate steps to secure community ownership and control of the EMI water delivery system.

XII. Final Statements

This report has been approved by all three members of the Temporary Investigative Group (TIG).

The TIG members would like to mahalo the many community members, experts in their fields, and government employees who provided valuable information for this report, including those who worked on the studies and reports referenced herein.

In all, TIG members volunteered approximately 30 hours in meetings as a group, more than 25 additional hours each on research, and 50-70 hours in report preparation.

The TIG was not provided with a budget to complete this work. As a result, all research was based on existing documentation, interviews, and a tour of the Kamole Weir.

Please note that TIG members are volunteers whose professional knowledge is not in the environmental or engineering spheres. Feel free to contact us through the Department of Water Supply to relay any corrections to data or information, or to submit questions.

The members learned a great deal, enjoyed their time learning from experts, and appreciate the time that they spent working together.



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Ms. Shay Chan Hodges
P.O. Box 1211
Makawao, HI 96768
Shay.chanhodges@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Shay Chan Hodges:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am submitting comments to you as an individual regarding the draft environmental impact statement referenced above. My primary concern relates to the alternative related to a change in ownership. Per the DEIS:*

Page iv “Alternatives Considered”:

“Alternatives considered but dismissed included certain water source alternatives, including use of groundwater and use of reclaimed water, as well as additional water storage. A change of ownership of the EMI Aqueduct System was similarly considered but dismissed from further study.”

Page 3-4, Section 3.1.2 Aqueduct Ownership:

“During public scoping for the DEIS in 2016 and 2017, it was suggested that the EMI Aqueduct System should be brought under new ownership, without the further involvement of A&B and EMI, and potentially under public ownership. Ownership of the EMI Aqueduct System changed in January 2019 to include Mahi Pono, which intends to pursue diversified agriculture in Central Maui. Consideration of another change in

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ownership is too speculative at this point to warrant analysis. A change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action. ...Furthermore, the EMI Aqueduct System is not for sale, and forced acquisition of the system is projected to be prohibitively expensive, resulting in substantial costs to the public. For these reasons, this alternative is viewed as a highly speculative and unreasonable alternative, and one that would not meet the objectives of the Proposed Action. Therefore, it was dismissed from further review."

On July 19, 2019, the Maui County Board of Water Supply formed a Temporary Investigative Group (TIG) to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Water Delivery System. The TIG's Report was made public on October 16, 2019 and can be accessed at the links below. It has not yet been deliberated on by the Board of Water Supply.

<https://www.mauicounty.gov/DocumentCenter/View/119847/2019-10-17-TIG-Report>

<https://www.mauicounty.gov/DocumentCenter/View/119848/2019-10-17-TIG-Report-Appendices>

I am also attaching a PDF of the narrative report with this email.

Response 1: We acknowledge that you are submitting comments to the subject Draft EIS in your individual capacity, and that your primary concern regarding the subject Draft EIS is the change in ownership alternative, discussed in Section 3.1.2. and also briefly summarized in the Draft EIS Executive Summary.

We are aware of the County Board of Water Supply (BWS) Temporary Investigative Group (TIG) Report, which was published after the Draft EIS, on the potential acquisition of the EMI Aqueduct System by the County, speaks directly to the "ownership change" alternative referenced in your comment. To provide further context, on July 19, 2019, the Maui County BWS formed the TIG to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System.

Our understanding is such action by the County of Maui is subject to conjecture and is largely speculative. Such a course of action would not meet the Applicant's objectives and goals outlined for the Proposed Action within this EIS, and is a course of action that the applicant could not even unilaterally pursue making it irrelevant to the scope of assessment within this EIS process. Even were this EIS able to entertain the evaluation of that action, it would be incredibly difficult to demonstrate that it could materially avoid, reduce, and or minimize the adverse environmental effects, costs or risks associated to a degree of marked improvement of the Proposed Action. Please note that HAR §11-200-17(f) requires an analysis of alternatives to the proposed action "*which could attain the objectives of the action.*" The objectives of the Water

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Lease (i.e., the Proposed Action), as stated in Section 1.2 of Draft EIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku.

As of the postmarked date of your comment letter (November 6, 2019) BWS had not yet deliberated on the findings of the TIG Report, or issued any such guidance in response to its findings. However, our understanding is that on December 19, 2010, the BWS approved the TIG Report. However, based upon the information obtained to date, the County's acquisition of the EMI Aqueduct System still remains speculative. The BWS has not yet deliberated on the findings of the TIG Report, nor issued any guidance in response to its finding.

We acknowledge the receipt of the TIG Report attached to your comment letter. The existence of the TIG report and its findings have been included in Section 3.1.2 of the Final EIS as shown on pages 3-19 to 3-20.

Comment 2: *The 283-Page TIG Report and the significant interest shown by members of the Maui County Council in it demonstrates that a change in the ownership of the EMI Aqueduct System as an alternative is not speculative.*

Response 2: Please note that by definition, “speculative” is an adjective that is used to describe:

The state of, “engaged in, expressing, or based on conjecture rather than knowledge” or, “(of an investment) involving a high risk of loss.”

Pursuant to the findings of the TIG report, there is marked level of risk associated with any plan to acquire the subject EMI Aqueduct System. Although consideration has been given to such an acquisition, to the knowledge of the applicant, no formal offer or negotiated proposal has been made. Furthermore, BWS has not yet deliberated on the findings of the TIG Report, nor issued any guidance in response to its finding. Consequently, for the purposes of the EIS, the potential change in ownership of the EMI Aqueduct System is very much speculative in nature.

Based upon information available in relation to findings and conclusions of the TIG report, it is our assessment that the County's potential acquisition of the EMI Aqueduct System remains speculative. Furthermore, much of the institutional knowledge needed to properly operate the EMI Aqueduct System would be lost under any change in ownership scenario. This could reduce the efficacy of the system, the new owner may not have the expertise needed to properly maintain it, and possibly lead to additional and unforeseen environmental impacts. Moreover, as

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discussed in Response #1 above, a change in ownership would presumably directly contradict the objectives of the Proposed Action as outlined within the EIS. It is noted that the TIG report's proposal for water rates for the Central Maui agricultural fields is nearly ten times that of what is being charged to the Agricultural Park and Upcountry agricultural users, thus rendering the economic viability of agriculture on the Central Maui fields unfeasible.

Comment 3: *The report further demonstrates that public ownership will enhance environmental quality and will avoid, reduce, and minimize the majority of the adverse environmental effects, costs, or risks of the Proposed Action, as addressed in the following chapters:*

- ***STRATEGIES FOR CREATING AND CONSERVING FRESH WATER CAPACITY***
- ***NATIVE HAWAIIAN LAND AND RIGHTS***
- ***CONSIDERATION RE: PURCHASING & MAINTAINING EMI SYSTEM***

Response 3: A change in ownership will not enhance the environmental quality as stated in Section 3.1.2. of the Draft EIS:

A change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action.

This statement derives from several of the technical studies conducted for the subject EIS. Specifically, this alternative was discussed in Appendix C, E, and F. Hence, the statement “a change in ownership will not enhance environmental quality” is based on assessments by experts in their respective fields for the subject EIS. We acknowledge that the TIG Report investigates the potential ramifications of purchasing and maintaining the EMI Aqueduct System. However, we believe the statement, “*public ownership will enhance environmental quality and will avoid, reduce, and minimize the majority of the adverse environmental effects, costs, or risks of the Proposed Action*” to be unsubstantiated. The subject TIG report does not make clear reference or justification for how any potential change in ownership of the EMI Aqueduct System would materially avoid, reduce, and or minimize the adverse environmental effects, costs or risks associated with the Proposed Action. Moreover, throughout the TIG Report, there are numerous statements indicating that costs associated with the EMI Aqueduct System are not known. Thus, we do not believe that “*public ownership will enhance environmental quality and will avoid, reduce, and minimize the majority of the adverse environmental effects, costs, or risks of the Proposed Action*” is an adequate statement to make at this time. Virtually all the same issues raised in the EIS would still remain and apply under Public Ownership. Thus, we still believe that the following statement is adequate:

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A change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action.

Comment 4: *The report also addresses an imminent domain acquisition, which will not be prohibitively expensive, and will in fact likely provide revenues for addressing the environmental and cultural issues described in the chapters outlined above. Information regarding purchase price, revenues, and expenses can be found in the following chapters:*

- ***CALCULATIONS FOR INITIAL PURCHASE PRICE, ESTIMATED EXPENSES, AND POTENTIAL REVENUES FOR A PUBLIC TRUST WATER SYSTEM***
- ***COUNTY BIDDING ON A LONG-TERM LEASE***
- ***EXAMPLE GOVERNANCE STRUCTURES***

Response 4: It is acknowledged that the subject TIG report provides calculations and some level of quantitative justification for the estimation of the value of the EMI Aqueduct System – the costing exercise discussed within does not reflect an appropriate, comprehensive appraisal of the actual or fair market value of the asset in question. It is not the intent of the Proposed Action to appraise the value of the EMI Aqueduct System. While the pros and cons of condemnation of the EMI Aqueduct System are beyond the scope of this Environmental Impact Statement, we have the following response to some of the issues raised by a possible condemnation.

- **Valuation.** As correctly noted by Deputy Corporation Counsel Caleb Rowe in a response to the BWS TIG, an appraisal would need to be done for the EMI Aqueduct System before condemnation could be filed. The TIG Report makes the assumption that just compensation for the EMI Aqueduct System would be the price stated in the purchase and sale agreement between Alexander & Baldwin and Mahi Pono, that is, approximately \$5.4 million. Under Hawai'i law, however, the price to be paid for the EMI Aqueduct System would be the market value of the EMI Aqueduct System as of the date that the condemnation action is filed and legal summons is issued. (See Hawai'i Revised Statutes § 101-24 (property assessed as of the date of summons).) The condemnee would not be bound by the price that might have been stated in the purchase and sale agreement, but would be entitled to the full fair market value of the EMI Aqueduct System as of the date of the summons.

The market value of property for condemnation purposes is generally arrived at through an appraisal by a qualified appraiser. Under generally-accepted appraisal methodology, there are three accepted approaches to determining value.

- The first is the **Sales Comparison Approach**, which is probably the approach most familiar to laymen. There, the appraiser looks for other properties which are

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comparable to the subject property. These values of these comparable properties are then adjusted up and down based on factors by which the subject property is deemed to be superior or inferior to the comparable property. Going through this process results in the appraiser being able to give an opinion of value for the subject property based on the comparables.

- The second is the Income Approach. Here, the appraiser looks at the income generated by the subject property, and by capitalizing the income stream is able to arrive at a market value for the property.
- The third is the Cost Approach. Here, the appraiser researches what it would take to essentially re-create or re-build the subject property.

The appraiser typically will attempt to derive a value under each of the three approaches, and then will use their expert judgment to derive a final value taking each of the three approaches into account.

In this instance, it may be difficult to arrive at the market value of the EMI Aqueduct System for condemnation purposes, and that value may be far different than set forth in the TIG Report. First, the Income Approach would not be applicable in this instance, because the EMI Aqueduct System is not an income-producing property.

Second, the Sales Comparison Approach may not be especially helpful, because water systems are not typically bought and sold in Hawai'i although there have been transactions in the past. For example, the much smaller Waiahole Ditch System on the Island of Oahu was acquired on a voluntary basis by the State of Hawai'i in 1998 for a price of \$8.5 million, plus funds for repair in the amount of \$1.2 million (See 1998 Session Laws, Act 111, Part IV). Given the fact that the EMI Aqueduct System is much larger than the Waiahole Ditch and the fact that substantial time has elapsed since that transaction, it can be anticipated that there would be substantial upward adjustment for passage of time and for size of the EMI Aqueduct System.

Finally, the Cost Approach may yield a much higher number in this instance. The price of being able to reproduce or reconstruct the System given today's costs and constraints could be much higher than it may have cost originally to construct the EMI Aqueduct System.

Further, to the extent that the County of Maui is seeking to take private lands that are being used to provide water to the EMI Aqueduct System, the owner is entitled to be paid compensation based on the special value of the land as water-producing. State v. Collins, 42 Haw. 199 (1957).

Additionally, to the extent that the County of Maui is attempting to acquire the EMI Aqueduct System as an operating concern, it will likely also have to acquire the various vehicles,

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machinery, equipment and other personal property being used to operate the EMI Aqueduct System. (See Hawai'i Revised Statutes §101-71, governing the condemnation of personal property used in connection with real property being taken.)

- Identification of Property to be Condemned and Parties to Be Named In the Condemnation. As also correctly indicated by Deputy Corporation Counsel Rowe, prior to filing a condemnation complaint the County of Maui will need to obtain a title report which would describe the property being taken and provide a legal metes-and-bounds description of that property (which would require a survey), as well as identifying any persons who have or could potentially claim an interest in that property or whose legal rights could be affected by the condemnation. All such persons would then need to be named in the condemnation complaint in addition to EMI. This could for example include easement holders and others who may have use or other rights in the EMI Aqueduct System.

Preparation of such a title report for the EMI Aqueduct System could prove to be a daunting task. As indicated in the TIG Report, the System was constructed in phases beginning in the 1870s and extending until 1923. It presently consists of approximately 388 separate intakes, 24 miles of ditches, and 50 miles of tunnels, as well as numerous small dams, intakes, pipes, 13 inverted siphons and flumes. It collects surface stream water from approximately 50,000 acres of land, of which approximately 33,000 acres are owned by the State, and the remaining approximately 17,000 acres are owned by EMI and Mahi Pono. Even if the State lands are omitted from the condemnation (which they would have to be, since the counties cannot condemn State land since it is a superior governmental entity), a search and metes-and-bounds property description of all the area being condemned would need to be done for the remaining lands. The surveying expense for doing this alone would likely be substantial.

- Public Use Concerns. Hawai'i Revised Statutes §46-61 provides that counties have the power to take private property, among other things, “for pumping stations, waterworks, [and] reservoirs, . . . and for rights-of-way for . . . pipe lines, aqueducts, and other conduits for distributing water to the public” Although the power to take property for public use has generally been construed broadly by the courts, there are some unique issues present with regard to the EMI Aqueduct System. First, there may be a question regarding whether the condemnation power only extends to taking property for construction of new public water improvements, rather than authorizing a taking of an already constructed system.

Beyond that, however, a substantial amount of the water transported through the EMI Aqueduct System is being used for private use, not public use. For example, the Draft EIS estimates that delivery of water at Maliko Gulch will be approximately 92.32 million gallons per day (mgd) if the State Water Lease allows up to the amount that can be diverted while still complying with the

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CWRM IIFS Decision and Order. As noted in the TIG Report, however, “[a] relatively small amount of water is used for residential and agricultural use by the MDWS for its Upcountry Maui Water Systems, which include the Upper Kula and Lower Kula Water Systems.” At present, the County of Maui Department of Water Supply on average producing 1.6 mgd at Olinda, 2.5 mgd at Piihola, and 3.6 mgd at Kamole-Weir. It seems that there could be a question whether “public use” would cover condemning a water delivery system where only a relatively small percentage of the water transported by the system would actually be used for public use.

Hawai‘i law is unclear whether the government can take property where public use is arguably only a small portion of the taking. Hawai‘i statutes indicate there could be issues with that type of taking. For example, Hawai‘i Revised Statutes §101-2, which governs governmental takings generally, states that:

Private property may be taken for public use. Private property may also be taken by the State of any county in excess of that needed for such public use in cases where small remnants would otherwise be left or where justifiable cause necessitates such taken to protect and preserve the improvement

In this case the question would be whether there is justifiable cause to take the entire EMI Aqueduct System when only a small portion of its use is needed by the County.

- Additional Costs to be Considered in Condemnation. In undertaking condemnation, the County of Maui needs to understand that once it acquires the EMI Aqueduct System, its obligations are just beginning. As legal owner of the EMI Aqueduct System, the County of Maui will become responsible for the costs of operating, repairing and maintaining the entire EMI Aqueduct System. As indicated in the TIG Report, those costs could be substantial. It is possible they could be covered in water rates charged to users, or may otherwise be paid for out of the tax revenues received by the County of Maui, but the ultimate legal responsibility for covering such costs is the County’s. The amount of such costs, and a plan for how those costs are going to be covered in future years, should be developed by the County of Maui prior to undertaking any condemnation.

Comment 5: *Given that the DEIS devotes less than half a page to the ownership change alternative, while a volunteer community board produced an 85-page document with 198 pages in supporting appendices regarding the feasibility of purchasing the aqueduct for public ownership, the draft EIS clearly has not adequately addressed this alternative, and at the very least needs to address the issues raised in the Temporary Investigative Report: Feasibility of Purchasing and Maintaining the EMI Water Delivery System.*

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Response 5: We acknowledge that a volunteer community board produced an 85-page document with respect to the feasibility of purchasing the EMI Aqueduct System for public ownership. However, to fully assess this alternative, a fair market value and appraisal would need to be conducted for the EMI Aqueduct System which is beyond the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS. Moreover, as noted in Response #1 above, pursuant to Section 11-200-17(f), HAR, a Draft EIS must include a section discussing alternatives which could attain the objectives of the action regardless of cost, in sufficient detail to explain why they were rejected. In each case, the analysis of the alternatives must be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the Proposed Action and each *reasonable alternative*. Particular attention should be given to alternatives that might enhance the environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks.

The objectives of the Proposed action are:

- Preserve and maintain the EMI Aqueduct System, including its access roads
- Continue to meet domestic and agricultural water demands in Upcountry Maui
- Continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses)
- Continue to serve community water demands in Nāhiku

Specifically, Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same degree as (a) through (d). Moreover, based on comments received on the Draft EIS, the alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the Final EIS.

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Other alternatives were also considered and discussed, including the alternative ownership of the EMI Aqueduct System (Section 3.1.2 of the EIS). However, a preliminary analysis determined that this alternative option is not considered viable for various reasons including the expected intensification of environmental effects and lack of feasibility. Therefore, the alternative ownership of the EMI Aqueduct System option was considered but dismissed from further study.

As previously mentioned above, and in Section 3.1.2:

A change in the ownership of the EMI Aqueduct System will not enhance environmental quality or avoid, reduce, or minimize all or even some adverse environmental effects, costs, or risks of the Proposed Action.

Comment 6: *Specific issues to address include, but are not limited to the initial purchase price and cost to restore the EMI Ditch System described on page 70 and 71 of the TIG report:*

<i>Initial Purchase Price</i>	<i>Amount</i>	<i>Notes</i>
<i>Includes 15,000 acres of land parcels and ditches utilized for the EMI System</i>	<i>\$5,442,333.48 (possibly less any depreciation since 12/17/18 purchase due to neglect.)</i>	<i>Based on MP purchase price for full system, (only half has been paid.)</i>
<i>Estimated costs to restore the EMI ditch system and to correct deferred maintenance.</i>	<i>\$12 million over two years.</i>	<i>Based on 6% of Replacement Asset Value (RAV) of \$200 million, which is the modern system replacement cost cited in the EMI Draft EIS</i>
<i>Total Purchase Price plus substantial improvements:</i>	<i>\$17.4 million</i>	<i>Improvements from the beginning</i>

Response 6: As mentioned and described above, under the context of the Proposed Action evaluated within the subject EIS, the change in ownership alternative clearly fails to achieve the objectives and goals outlined. The speculative acquisition of the EMI aqueduct system is acknowledged as a potential option, but is not carried forward for detailed analysis within the EIS for reasons mentioned in the responses above. However, we agree that the public acquisition of the subject EMI Aqueduct System would warrant further evaluation, and should be subject to its own, independent HRS 343 EIS process.

Comment 7: *Bond Payments:*

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If the EMI System is acquired by the County or State, properly structured bond financing could be utilized for acquisition and restoration of the system. Borrowing \$17.4 million at 3.75% over thirty years would require debt service payments totaling \$966,985 annually.

Response 7: We agree that the calculations of debt service payments contained within the TIG report are mathematically accurate, but largely irrelevant under the scope of assessment of the Proposed Action within the subject EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 8: *Value of Purchasing System Prior to Mahi Pono Obtaining a Long-Term Lease: If Mahi Pono is able to obtain a 30-year lease, the company will likely try to argue that the EMI aqueduct system has a higher value with a long-term lease than its purchase price of \$5.4 million. There are clear indications from the December 17, 2018 purchase agreement with Alexander & Baldwin that a core component of Mahi Pono’s investment strategy is the monetization of public trust water resources as evidenced by A&B’s obligation to rebate Mahi Pono \$62 million of the purchase price if Mahi Pono does not obtain a water lease allocation of at least 30 mgd. (See sales agreement)*

Response 8: As described above, following conventional appraisal methodology, the \$62 million dollar rebate obligation serves as more of a tangible estimation of the value of the system on the cost basis / comparison approach. Theoretically, the potentially valuation of the system could be exponentially higher if appraisal follows the income approach. Clearly, the true value of the productivity of the Central Maui Agricultural fields critically relies on the conveyance of water by the subject EMI Aqueduct System – consequently, it is fairly clear that any realistic valuation of the system would far exceed the value cited in the subject TIG report.

Comment 9: *Another issue raised in the TIG report is the value of the water requested in the lease application. The figures shown on page 72 of the TIG report need to be addressed: According to the Draft EIS, Page 2-18:*

The Mahi Pono farm plan assumes the following: The total surface water available for use after system losses is estimated to be approximately 65.88 mgd.

Response 9: An appraisal to determine the fair market value of the Water Lease will be conducted prior to issuance of the Water Lease. Our expectation is that the DLNR, on behalf of the BLNR, will commission, or approve the commissioning of, the appraisal. The cost of water to the County of Maui also depends on the operational costs of running the EMI Aqueduct

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System, including all costs of complying with applicable regulations and laws. However, as discussed in 4.7.3 of the Draft EIS, under the Proposed Action (where the maximum amount of water is limited by the CWRM D&O and therefore below historical averages), the rate MDWS currently pays to EMI (\$0.06 per kgal) will increase because EMI's per unit operating cost will increase as a result of fixed costs being spread out over a lower volume of water diverted and possible higher lease payments to the State compared to historic payments. While it is anticipated that the delivery costs to the County of Maui will increase, the exact amount of the increase cannot be known until the Water Lease is finalized. However, the estimate analyzed in the Draft EIS assumed a year 2030 water service fee rate of \$0.08 per kgal. This figure was calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, the MDWS would pay an estimated \$214,600 per year to EMI. However, please note that this discussion in Section 4.7.3 of the Final EIS has been updated to take into account the latest equivalent per unit cost under the latest revocable permit as shown on pages 4-277 and 4-283.

Comment 10: *Based on maximum delivery of water and current agricultural and domestic water rates charged to Maui County farmers and residents, the highest potential annual agricultural revenue that can be derived from the 65.88 mgd is:*

<i>Convert 65.88 mgd to kgal (1,000 gallons)</i>	<i>Convert to kgal per year (365 days)</i>	<i>If water were delivered at current agricultural rates (\$1.10 per 1,000 gallons)</i>
65,880 kgal	24,046,200 kgal per year	\$26,450,820

Response 10: The calculations cited in the TIG report under reference by your comment are mathematically accurate.

Comment 11: **And finally, the EIS needs to address the issues raised under “Recommendations and Conclusion” on Page 81:**

Based on all the information available to the TIG at this time, the Temporary Investigative Group is convinced that in order to protect the public's health, safety, and well-being in the short- and long-terms, actions need to be taken immediately to utilize legal and financial vehicles to secure the public's control of the EMI Water Delivery System.

Response 11: Our understanding is that the purpose of the TIG and TIG Report is to inform the County as a fact-finding, context building exercise. The acquisition of the subject EMI Aqueduct System is tangential and largely irrelevant under the context of the Proposed Action (issuance of a lease to A&B/Mahi Pono). Moreover, to our current understanding, the County has yet to deliberate on the TIG Report.

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Comment 12: *A. County Application for a Long-Term Lease:*

Maui County should immediately apply for a long-term (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas, situated at TMK Nos. (2) 1-2- 004:005, 007 (por.), 1-1-002:002, 1-1-001:044, 1-1-001:050, 2-9-014:001, 005, 011, 012, 017 in the Makawao and Hana Districts, on the island of Maui.

The above action would be valuable on its own, in terms of supporting the next step, as well as working in tandem with "Recommended Near-Term Actions" below.

Response 12: As noted previously, we agree that the application for a competing, long-term lease by the County of Maui could occur. However, the evaluation of that act would be subject to its own HRS, 343 process governed by a completely different set of objectives and goals, which is outside the scope of this EIS process. Our understanding is that course of action is largely speculative, and would not meet the objectives and goals outlined by the Proposed Action within this EIS. Moreover, such an alternative would not materially avoid, reduce, and or minimize the adverse environmental effects, costs or risks associated with the Proposed Action.

Comment 13: *B. Re-negotiate Current Contracts with EMI/Mahi Pono*

Maui County should immediately re-negotiate a new contract with EMI/Mahi Pono that does not require that EMI/Mahi Pono obtain a Revocable Permit or Lease in order for the Kamole Treatment Plant to access Wailoa Ditch waters. This lease could also include requirements that address the various issues raised in this document from repair and maintenance of the system to native Hawaiian stream rights to investment in watershed protection and addressing liability issues.

By applying for a long-term lease, the County would be better positioned to re-negotiate the contract with EMI/Mahi Pono. Excluding corporation counsel personnel costs, this option would be relatively straightforward and would not be cost prohibitive. (See current Lease Appendix 13.)

However, this option would require enforcement on the part of the County, which would only be realistic if the County were willing to fully utilize its powers and responsibilities to protect the public interest. Furthermore, long-term solutions are needed to ensure the well-being of Maui residents.

Response 13: It is our understanding that current contractual agreements in place between the MDWS and EMI will be re-negotiated should a new Water Lease is issued. The MDWS has been able to receive its surface waters from all three Upcountry Maui water sources through a series of agreements with EMI. Because the EMI agreements with the MDWS provide that water supplied to the MDWS is contingent upon the Water Lease being issued, for purposes of this EIS, no water is presumed to be provided to the MDWS if the Water Lease is not issued.

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Moreover, the Water Lease and lessee will be subject to HRS § 171-58 as discussed in Section 2.1 of the EIS:

The amount of water awarded by the Water Lease is subject to all applicable requirements under HRS § 171-58. HRS § 171-58(c), (d), and (e) articulate terms for the disposition of the Water Lease. HRS § 171-58(e) requires that any new lease of water rights "shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan."

At the March 22, 2019 meeting of the BLNR, the DLNR staff proposed a watershed management cost share formula and contribution for leases of water rights pursuant to HRS § 171-58(e). The BLNR deferred decision-making on the staff's proposal, the consensus was that compliance with the watershed management provision of HRS § 171-58(e) should be determined on a case-by-case basis for each individual water lease.

Furthermore, we agree that the County of Maui should explore all its options related to the TIG Report should the outlined actions specified within the report are likely to be acted upon in some fashion. As previously noted, this action would be subject to its own HRS 343 process.

Comment 14: *Recommended Near-Term Actions:*

As outlined under "Governance Structures" and described in more detail previously, because the financial incentive structure of a private equity-controlled water delivery system is misaligned with the long-term public interest, it would be imprudent to assume that the "Primary" and "Other Considerations" described above [on Page 80] will be addressed by Mahi Pono.

Response 14: It is acknowledged that the TIG Report recommends that the County of Maui exercise its powers of eminent domain to acquire the EMI Aqueduct System. However, please note that in undertaking condemnation, the County of Maui needs to understand that once it acquires the EMI Aqueduct System, its obligations are just beginning. As legal owner of the EMI Aqueduct System, the County of Maui will become responsible for the costs of operating, repairing and maintaining the entire EMI Aqueduct System. As indicated in the TIG Report, those costs could be substantial. It is possible they could be covered in water rates charged to users, or may otherwise be paid for out of the tax revenues received by the County of Maui, but the ultimate legal responsibility for covering such costs is the County's. The amount of such costs, and a plan for how those costs are going to be covered in future years, should be developed by the County of Maui prior to undertaking any condemnation.

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Comment 15: *Furthermore, if the County of Maui is interested in facilitating community control of the EMI Aqueduct system and meeting the multiple needs of stakeholders, acquiring the system at a price close to the \$5.4 million paid by Mahi Pono in December 2018 is essential. As noted previously, if Mahi Pono obtains a 30-year water lease, the private equity fund will likely argue that the EMI aqueduct system has a value higher than the original purchase price. (Mahi Pono's sales agreement with A&B states that the water lease is worth a minimum of \$62 million.) Acquiring the system in the near term will thus increase the chances of minimizing long-term debt.*

Response 15: As previously noted, the TIG Report makes the assumption that just compensation for the EMI Aqueduct System would be the price stated in the purchase and sale agreement between Alexander & Baldwin and Mahi Pono, that is, approximately \$5.4 million. Under Hawai'i law, however, the price to be paid for the EMI Aqueduct System would be the market value of the EMI Aqueduct System as of the date that the condemnation action is filed and legal summons is issued. (See Hawai'i Revised Statutes § 101-24 (property assessed as of the date of summons).) The condemnee would not be bound by the price that might have been stated in the purchase and sale agreement, but would be entitled to the full fair market value of the EMI Aqueduct System as of the date of the summons. How fair market value is derived is described in more detail above.

Comment 16: *Thank you for your attention to this matter. I look forward to seeing the issues raised in the Board of Water Supply's Temporary Investigative Group Report integrated into the final Environmental Impact Statement.*

Response 16: We acknowledge your comments and provided you with detailed responses to each of your comments above. Please note that we are aware of the County BWS TIG Report, which was published after the Draft EIS, on the potential acquisition of the EMI Aqueduct System by the County, speaks directly to the "ownership change" alternative referenced in your comment. To provide further context, on July 19, 2019, the Maui County BWS formed the TIG to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System.

Based upon information available in relation to findings and conclusions of the TIG report, it is our assessment that the County's potential acquisition of the EMI Aqueduct System remains speculative. Furthermore, much of the institutional knowledge needed to properly operate the EMI Aqueduct System would be lost under any change in ownership scenario. This could reduce the efficacy of the system, the new owner may not have the expertise needed to properly maintain it, and possibly lead to additional and unforeseen environmental impacts. Moreover, a change in ownership would presumably directly contradict the objectives of the Proposed Action as outlined within the EIS. It is noted that the TIG report's proposal for water rates for the Central Maui agricultural fields is nearly ten times that of what is being charged to the

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Agricultural Park and Upcountry agricultural users, thus rendering the economic viability of agriculture on the Central Maui fields unfeasible.

For purposes of assessment in this EIS, it is assumed that an alternative owner of the EMI Aqueduct System would be required to meet goals of the Proposed Action as described in this EIS, including meeting the Proposed Action's stated objective to support an economically feasible, sustainable diversified agricultural operation across the Central Maui agricultural fields.

For the reasons discussed above, the County's acquisition of the EMI Aqueduct System, and the County's pursuit of a water lease from the BLNR are viewed as speculative and an unreasonable alternatives. However, the existence and findings of the TIG Report has been acknowledged in Section 3.1.2 of the Final EIS, as shown on pages 3-19 to 3-20. A copy of the TIG Report has been included in the Final EIS as Appendix P.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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From: Spencer Hyde <spencer_hyde3@hotmail.com>
Sent: Thursday, November 7, 2019 2:28 PM
To: lan.c.hirokawa@hawaii.gov; Public Comment
Subject: Comments RE: DEIS for Proposed East Maui Water Lease

Aloha Mr. Hirokawa and Mr. Matsukawa,

My name is Spencer Hyde, I am 26 years old, and I am writing because I care a lot about my home and the news that A&B and Mahi Pono may take control of our water resources by diverting East Maui streams for another thirty years deeply concerns me.

I understand that Mahi Pono wants to ensure access to all of the water that they need for the foreseeable future in order to invest in their business. Growing food locally is important.

But we would be foolish to believe that growing food is Mahi Pono's main interest. Water is an increasingly valuable resource, one in which investors around the world have described as "the new oil," or "the new gold." Just Google either of those two statements and you will find a plethora of articles about it.

In 30 years it will be 2050. At the rate in which civilization continues to emit CO2 into the atmosphere, we cannot be certain that Maui's ecosystem will still be functioning like it is today. Just Google "climate change 2050."

A&B and Mahi Pono's lease on East Maui water should be limited and conditional. I hope you consider shorter term lease options, because we just don't know what the state of the planet will be in 2050.

Thanks for the opportunity to comment,
Spencer



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Spencer Hyde
Spencer_hyde3@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Spencer Hyde:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *My name is Spencer Hyde, I am 26 years old, and I am writing because I care a lot about my home and the news that A&B and Mahi Pono may take control of our water resources by diverting East Maui streams for another thirty years deeply concerns me.*

Response 1: We acknowledge your comments and understand that you are a Maui resident. Please note that we provide detailed responses to your comments below.

Comment 2: *I understand that Mahi Pono wants to ensure access to all of the water that they need for the foreseeable future in order to invest in their business. Growing food locally is important.*

But we would be foolish to believe that growing food is Mahi Pono's main interest. Water is an increasingly valuable resource, one in which investors around the world have described as "the new oil," or "the new gold." Just Google either of those two statements and you will find a plethora of articles about it.

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In 30 years it will be 2050. At the rate in which civilization continues to emit CO2 into the atmosphere, we cannot be certain that Maui's ecosystem will still be functioning like it is today. Just Google "climate change 2050."

Response 2: Please note that Under the Proposed Action, the proposed Water Lease requests to divert the maximum amount of water from the License Area after compliance with the CWRM D&O for uses described in the EIS.

We respectfully disagree with your comment that it is foolish to believe that agriculture is Mahi Pono's main interest. Under the Proposed Action, Mahi Pono will introduce new agricultural activity to the State of Hawai'i, which will benefit the State by increasing food production, employment, payroll, profits for farm tenants and companies supplying goods and services, and tax revenues to the State and County of Maui as described in Sections 4.7.3 and 4.7.4 of the Draft EIS as well as Appendix H (Economic and Fiscal Impact Study) and Appendix I (Agricultural and Related Economic Impacts). While profits from Mahi Pono's farming activities, when they exist, will be distributed to its investors, including but not limited to PSP, a Canadian pension fund, most of the economic benefits will remain in Hawai'i. Please note that farming activity typically requires significant upfront investment, with much later returns. The capital for that investment is provided by Mahi Pono's investors.

Please note that as discussed in Section 2.1.2 of the Draft EIS, under the Proposed Action, at full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd will be diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

The only development within Central Maui contemplated in connection with the proposed Water Lease is the continued re-development and re-establishment of agriculture on approximately 30,000 acres of agricultural fields that used to be in sugarcane and are now planned and being used for diversified agriculture. It is expected that the Water Lease will authorize specific character of use for the leased water and any use that is outside of that authorization would not be permitted.

With regards to climate change, please note that the EIS includes the most recent information regarding climate change within its analysis. As discussed in Section 4.3.1 of the Draft EIS:

Regular trade winds are key in driving the Hawai'i's hydrological cycle, generating rainfall which helps maintain Maui's water supply. However, a recent

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study showed that Hawai‘i’s trade winds have decreased in frequency by approximately 30% over the past 37 years, from 291 days per year in 1973, to 210 days per year in 2009 (Garza et. al, 2012). The decrease in the trade winds could have serious implications for the Hawaiian Islands, including adversely impacting local agriculture, native ecosystems and endangered species, and the State’s limited freshwater supply.

Overall, the State of Hawai‘i is experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014)...

Climate change trends suggest increased potential for East Maui, including the License Area, to experience periods of intense, episodic rainfall where several inches of rain can fall in a matter of a few hours. Such rainfall patterns increase the amount of stormwater runoff flowing through the region, including through the streams within the License Area that reach the shoreline. The expected climatic changes in precipitation patterns and streamflow will influence the quantities and concentration of stormwater runoff entering the nearshore environments and coastal waters, resulting in increased sedimentation, impacting coral reefs. However, because of the continuous wave energy in shore areas in East Maui, nearshore areas in East Maui do not constitute important habitats for coral reef communities and associated marine species. (SE & MRC, 2019).

Hence, the EIS recognizes that the State of Hawai‘i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall. Moreover, Section 4.3.1 of the Final EIS has been expanded to include information from the archeological literature review and field inspection

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(LRFI) report (Appendix E), the Cultural Impact Assessment (CIA) report (Appendix F), and the Terrestrial Flora and Fauna Technical Report (Appendix C) prepared for this EIS as shown on pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Comment 3: *A&B and Mahi Pono's lease on East Maui water should be limited and conditional. I hope you consider shorter term lease options, because we just don't know what the state of the planet will be in 2050.*

Response 3: We acknowledge your comments. Please note that the terms and conditions are at the discretion of the BLNR. With regards to your comment about a shorter lease duration, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for

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various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: ss@everyactioncustom.com on behalf of Steven Slater <ss@everyactioncustom.com>
Sent: Monday, November 4, 2019 11:39 AM
To: Public Comment
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement

Dear Mr. Matsukawa,

Climate change

It would be highly irresponsible to assume that any EIS no matter how thorough could be any indication of near future impacts due to extreme climate change. A 30 year lease would be a stab in the back of the security of future Maui generations. As the stress factors on marine and stream ecosystems, increase with climate change, we need a government agency that can adjust the needs of water distribution. Only short term, renewable leases should even be considered. Knowledge in the field of Biology is exploding. In well under 30 years, we will probably realize how dependent our island ecosystems are on our native microbial biome. This is not the Mid-West, nor the Central Valley of California.

Public confidence in Government

Hundreds of years of foreign then corporate privilege, have stunted the sophistication of the public as far as standing up for their rights. Personally, I have witnessed shady 'public' hearings regarding East Maui water for over 35 years. Maui's residents are used to being 98% in favor of fair distribution of water and environmental rights, only to be ignored or voted down, virtually every time. We now have two generations of disgruntled citizens, who believe less in Democratic values on Maui, then on being victims of a Corporate/foreign dictatorship.

#Glyphosate in drinking water

Having been on Sierra Club hikes, I have had a chance to see first hand, the ridiculous amount of herbicide spraying along both sides of even the upper forest ditch system. Closer to home the dead vegetation attests to a management of what for many is 'public' drinking water, that boarderlines criminally liable actions. Considering the shameful amount of leaks in the system, this poisoning of those of us who have had ditch water as our 'County' water, shows a lack of responsible management. We cannot trust another Corporation, especially one that as a special relationship to A&B, to be in charge of such a critical public health resource.

Our rights to Waipio stream

I purchased my 3.8 acres in Huelo 19 years ago, the deed specifies that I have the water right to a 1 inch pipe to Waipio Stream, which was not listed during previous water diversion documents. I have brought this up at several public hearings, and never got any response. After 19 years of catchment only for two houses and almost 4 acres, it is time to respect my rights. Waipio stream has been so heavily tapped that taking my small share of the water would be damaging to the already heavily compromised ecosystems of both the damaged stream and the diminished biodiversity of Waipio Bay, not to mention the poor quality of the trickling brook that once carved a beautiful bay.

Excessive size of EIS

After so many years of undemocratic corporate control of both the water and the access to Maui's most pristine land, the EIS should have been done by DLNR, not a private for profit agency, who's goal was to get the lease not do a fair assessment.

Sincerely,
Steven Slater
55 E Waipio Rd Haiku, HI 96708-5725
ss@vcasa.net



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Mr. Steven Slater
55 E. Waipio Road
Haiku, HI 96708
ss@vcasa.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Slater:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Climate change*

It would be highly irresponsible to assume that any EIS no matter how thorough could be any indication of near future impacts due to extreme climate change. A 30 year lease would be a stab in the back of the security of future Maui generations. As the stress factors on marine and stream ecosystems, increase with climate change, we need a government agency that can adjust the needs of water distribution. Only short term, renewable leases should even be considered. Knowledge in the field of Biology is exploding. In well under 30 years, we will probably realize how dependent our island ecosystems are on our native microbial biome. This is not the Mid-West, nor the Central Valley of California.

Response 1: We acknowledge your comments. Climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai‘i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and

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coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

With regards to the lease duration, please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to

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reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

With regards to your comment about marine ecosystems, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment

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problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

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Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSheP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83.

Comment 2: *Public confidence in Government*

Hundreds of years of foreign then corporate privilege, have stunted the sophistication of the public as far as standing up for their rights. Personally, I have witnessed shady 'public' hearings regarding East Maui water for over 35 years. Maui's residents are used to being 98% in favor of fair distribution of water and environmental rights, only to be ignored or voted down, virtually every time. We now have two generations of disgruntled citizens, who believe less in Democratic values on Maui, then on being victims of a Corporate/foreign dictatorship.

Response 2: We acknowledge your comments. However, please note it is not within scope to assess government meetings and public hearings as the EIS is not a document that authorizes or mandates any actions. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS. However, please note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). The Applicant made every reasonable effort to convey information through the Draft EIS in a manner that is accurate, thorough, and appropriately concise in order to provide the public with an opportunity to fairly analyze the potential impacts of the Proposed Action.

Comment 3: *#Glyphosate in drinking water*

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Having been on Sierra Club hikes, I have had a chance to see first hand, the ridiculous amount of herbicide spraying along both sides of even the upper forest ditch system. Closer to home the dead vegetation attests to a management of what for many is 'public' drinking water, that boarderlines criminally liable actions. Considering the shameful amount of leaks in the system, this poisoning of those of us who have had ditch water as our 'County' water, shows a lack of responsible management. We cannot trust another Corporation, especially one that as a special relationship to A&B, to be in charge of such a critical public health resource.

Response 3: Regarding your comment about pesticide use, as discussed in Section 4.12 pesticide use is regulated by both State and Federal law. The use of these chemicals is compliant with all laws regulating pesticide use, and certified commercial applicators are utilized as required. Act 45 which was passed by the 2018 Hawai'i Legislature and effective on January 1, 2019 required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. This report as well as any other report required by law is publicly available from the respective government entity. The State of Hawai'i DOA's Pesticide Branch also provides regulatory oversight over EMI's pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. It is also noted that since January 2020 EMI committed to discontinuing use of Round-Up. This information has been included in the Final EIS as shown on pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations.

Comment 4: *Our rights to Waipio stream*

I purchased my 3.8 acres in Huelo 19 years ago, the deed specifies that I have the water right to a 1 inch pipe to Waipio Stream, which was not listed during previous water diversion documents. I have brought this up at several public hearings, and never got any response. After 19 years of catchment only for two houses and almost 4 acres, it is time to respect my rights. Waipio stream has been so heavily tapped that taking my small share of the water would be damaging to the already heavily compromised ecosystems of both the damaged stream and the diminished biodiversity of Waipio Bay, not to mention the poor quality of the trickling brook that once carved a beautiful bay.

Response 4: We acknowledge your comments. However, please note that your comment regarding your water rights to a 1-inch pipe is not within the scope of the document. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users, including

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A&B's former sugar cane fields in Central Maui. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS. However, we do note that Waipi'o stream was one of the streams not subject to the CWRM D&O as discussed in Section 1.3.4 of the Draft EIS. Please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown on pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text on pages 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area, which includes an assessment of the non-petitioned streams. The Final EIS has included this clarifying statement in Section 4.2.1.

Comment 5: *Excessive size of EIS*

After so many years of undemocratic corporate control of both the water and the access to Maui's most pristine land, the EIS should have been done by DLNR, not a private for profit agency, who's goal was to get the lease not do a fair assessment.

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Response 5: BLNR determined that A&B was to prepare the EIS for the proposed Water Lease. As explained in Section 1.4 of the Draft EIS, in connection with A&B's May 2001 submittal to the BLNR requesting that the BLNR offer a long-term (30 year) water lease at public auction, A&B offered to perform the associated HRS, Chapter 343 environmental review. As part of the contested case hearing on the proposed Water Lease, NHLC, on behalf of Nā Moku, objected to A&B undertaking the environmental review process, and asserted that the BLNR was required to prepare conduct the environmental review. NHLC later orally withdrew its objection during oral arguments before the BLNR in May 2015. BLNR issued an order on April 14, 2016, directing A&B to scope the EIS, including the identification of the portions of the EIS that could proceed prior to the CWRM issuing a final IIFS decision, and those portions which could not. That scope was filed with the BLNR in June 2016. On July 8, 2016, the BLNR approved the scope and instructed that "A&B and EMI should proceed with the preparation of an environmental impact statement (EIS) in as expeditious manner as possible." The EIS recites this history in Section 1.3.3 of the Draft EIS and recognizes that the Water Lease will be awarded by public auction. The Draft EIS fully complied with all relevant requirements, including the content requirements set forth in §11-200-16 and 11-200-17, and the Draft EIS even includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement. The Draft EIS meets the necessary content requirements and for that reason we disagree with your comment that the Draft EIS does not disclose sufficient information about the anticipated impacts of the Proposed Action, alternatives to the Proposed Action, and feasible measures that might be taken to mitigate potential impacts, sufficient to allow informed decision making.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Letter to Mr. Steve Slater
Page 9 of 9
September 3, 2021

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant



Please extend the comment period due to the lengthy nature of the document and the importance of this issue to the community. TO ACHIEVE THIS, A&B SHOULD WITHDRAW ITS DEIS AND RESUBMIT IT FOR PUBLICATION IN THE ENVIRONMENTAL NOTICE WITHOUT ALTERATIONS. This short delay is minor in comparison to the 30-year lease that is sought, and will ensure community members who have direct knowledge of the potential impacts of the proposed lease have an opportunity to offer their comments and strengthen the process.

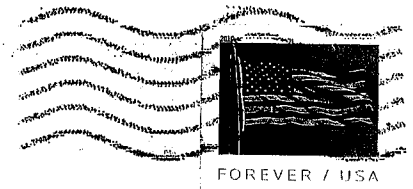
TIMES TWO SO YOU GET IT 6



Please extend the comment period due to the lengthy nature of the document and the importance of this issue to the community. TO ACHIEVE THIS, A&B SHOULD WITHDRAW ITS DEIS AND RESUBMIT IT FOR PUBLICATION IN THE ENVIRONMENTAL NOTICE WITHOUT ALTERATIONS. This short delay is minor in comparison to the 30-year lease that is sought, and will ensure community members who have direct knowledge of the potential impacts of the proposed lease have an opportunity to offer their comments and strengthen the process.

 Steven Van Paeppeghem
PO Box 181
Hana, HI 96713

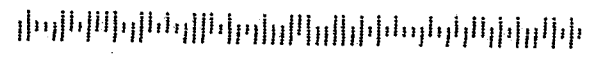
HONOLULU HI 968
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BOARD OF LAND & NATURAL RESOURCES
ATTN STATE OF HAWAII, MR IAN HIROKAWA
1151 PUNCHBOWL ST.
HONOLULU, HI 96813

RECEIVED
LAND DIVISION
2019 NOV -7 AM 11:02
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

96813-305276





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10238-04
September 3, 2021

Mr. Steven Van Paepegham
P.O. Box 181
Hana, HI 96713

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Van Paepegham:

Thank you for comments dated November 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please extend comment period due to the lengthy nature of the document and the importance of this issue to the community. TO ACHIEVE THIS, A&B SHOULD WITHDRAW ITS DEIS AND RESUBMIT IT FOR PUBLICATION IN THE ENVIRONMENTAL NOTICE WITHOUT ALTERATIONS. This short delay is minor in comparison to the 30-year lease that is being sought, and will ensure community members who have direct knowledge of the potential impacts of the proposed lease have an opportunity to offer their comments and strengthen the process.*

Please extend comment period due to the lengthy nature of the document and the importance of this issue to the community. TO ACHIEVE THIS, A&B SHOULD WITHDRAW ITS DEIS AND RESUBMIT IT FOR PUBLICATION IN THE ENVIRONMENTAL NOTICE WITHOUT ALTERATIONS. This short delay is minor in comparison to the 30-year lease that is being sought, and will ensure community members who have direct knowledge of the potential impacts of the proposed lease have an opportunity to offer their comments and strengthen the process.

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Letter to Mr. Steven Van Paepegham
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September 3, 2021

TIMES TWO SO YOU GET IT?

Response 1: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kaikeola@everyactioncustom.com on behalf of Stevensdrake Hookano
<kaikeola@everyactioncustom.com>
Sent: Wednesday, October 9, 2019 7:04 PM
To: Public Comment
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement

Dear Mr. Matsukawa,

Aloha my name is Stevensdrake Kaikeola Hookano my Ohana resides in Ko'olau since time immemorial I am a kalo farmer that continues to farm and was affected in the contested case hearing, I am submitting my testimony on behalf of my Hookano Ohana who reside in Wailuanui Ko'olau Maui As a direct descendent and native tenant, I am concerned about the negative impact on the dewatering of areas within our Moku of Ko'olau which have been in a state of improper management practices for decades Please take it to consideration that native tenet rights will be affected under HRS Article 12 section 7 my Ohana's rights to gather in streams for cultural sustenance will be in jeopardy as my Ohana have direct ties to areas being diverted and we continue to practice in Ko'olau right now all water is reaching the ocean and thru the years have seen the streams repair itself the fish has returned in abundance and life in the streams are returning please address my concerns and my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui so our community can have a healthy flow of water Mauka to Makai. I believe that there is much more that can be done to address this issue and find solutions to fix the issue and should be talked about more on this issue so all parties can come up with positive solutions that will not put Maui's most precious resource in jeopardy for future generations with deep sadness on this issue Mahalo.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Stevensdrake Hookano
245 Wailua Rd Haiku, HI 96708-5724
kaikeola@gmail.com



10238-04
September 3, 2021

Mr. Stevensdrake Hookano
245 Wailua Road
Haiku, HI 96708
kaikeola@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Hookano:

Thank you for comments dated October 9, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Aloha my name is Stevensdrake Kaikeola Hookano my Ohana resides in Ko‘olau since time immemorial I am a kalo farmer that continues to farm and was affected in the contested case hearing ,I am submitting my testimony on behalf of my Hookano Ohana who reside in Wailuanui Ko‘olau Maui*

Response 1: We acknowledge your comments and understand that you are a kalo farmer that resides in East Maui within Wailuānui.

With regards to kalo farming and Wailuānui Stream, please note that this is one of the streams identified by the CWRM D&O for full restoration. The CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

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Letter to Mr. Stevensdrake Hookano

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Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on pages 1-19 to 1-23 of the Final EIS. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is

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Letter to Mr. Stevensdrake Hookano

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assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 2: *As a direct descendent and native tenant, I am concerned about the negative impact on the dewatering of areas within our Moku of Ko’olau which have bin in a state of improper management practices for decades Please take it to consideration that native tenet rights will be affected under HRS Article 12 section 7 my Ohana’s rights to gather in streams for cultural sustenance will be in jeopardy as my Ohana have direct ties to areas being diverted and we continue to practice in Ko’olau*

Response 2: Your comment about improper management practices is unclear. However, please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed

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management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

With regards to your comment about native tenant rights, as discussed in the *Ka Pa`akai* decision, we acknowledge that BLNR will be required to “to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible.” *Ka Pa`akai* at, 94 Hawai`i at 35, 7 P. 3d at 1072. BLNR has confirmed that in its Findings of Fact, Conclusions of Law, and Decision and Order filed on March 23, 2007 in the contested case proceeding that is still pending regarding issuance of the proposed Water Lease (the 2007 D&O) as follows:

Public trust principles require that adequate provision be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture and navigation.

2007 D&O COL No. 6 at page 41 (*citing In Re Water Use Permit Applications*, 94 Hawai`i 97, 9 P. 3d 409 (2000)). CWRM, in its June 20, 2018 D&O, also recited the State’s constitutional obligation to consider the impacts of stream diversions in East Maui on traditional and customary practices of Native Hawaiians at pages 242 through 245, including the Supreme Court of Hawai`i’s more recent holding on this subject in *State v. Pratt*, 127 Hawai`i 206, 277 P. 3d 300 (2012).

In order to facilitate BLNR’s compliance with this obligation, the EIS discussed cultural resources and practices, and the impacts to cultural resources and practices, in section 3.4.10 and in 4.6. The EIS also includes a comprehensive CIA prepared by CSH. Note that the CIA now includes information from a second round of consultation, which was done in response to comments submitted on the Draft EIS. We believe that the EIS (including Appendix F) together with the CWRM D&O, provide ample information for the BLNR to consider regarding potential impacts to traditional and customary practices, and that information will enable BLNR, at the point in the future that it is deliberating on the Water Lease, to fulfill its constitutional obligation “to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible.” *Ka Pa`akai* at, 94 Hawai`i at 35, 7 P. 3d at 1072.

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Letter to Mr. Stevensdrake Hookano
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Comment 3: *right now all water is reaching the ocean and thru the years have seen the streams repair itself the fish has returned in abundance and life in the streams are returning*

Response 3: We acknowledge your comments. Please note that many people at the EISPN public scoping meetings on February 22nd and 23rd, 2017 testified noting positive impacts seen from increased stream flow resulting from the cessation of sugar operations, please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See page 4-168 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. This is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSHEP model estimated that approximately 79.8% of total habitat units (HU) would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected under the No Action alternative.

Comment 4: *please address my concerns and my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui so our community can have a healthy flow of water Mauka to Makai. I believe that there is much more that can be done to address this issue and find solutions to fix the issue and should be talked about more on this issue so all parties can come up with positive solutions that will not put Maui's most precious resource in jeopardy for future generations with deep sadness on this issue Mahalo.*

Response 4: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Susan Halas <wailukusue@gmail.com>
Sent: Wednesday, November 6, 2019 9:28 AM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Resending: Comment: Oppose 30 year water lease to A&B

Resending this comment, was an error in address in prior email

I write to comment on the EIS submitted in conjunction with the A&B application for a 30 year water lease for island of Maui.

I found the projections of the amount of water needed for agricultural use unreasonably high and unsubstantiated by the applicant A&B or its successor Mahi Pono.

I think 30 years is an unreasonably long period to assign such a large amount of public water to a private owner especially with no established track record in this state and allegations of speculation, profiteering and conflict of interest lurking in the wings.

The massive EIS does not adequately address the question of the **public interest in this situation** and instead floods the decision making body with a massive amount of irrelevant and slanted information.

I urge you to deny this application and reject the assertions of A&B and Mahi Pono and reopen the bidding to other qualified applicants.

--
Susan Halas
1939A Vineyard St.
Wailuku, HI 96793
(808) 244-7777
(808) 280-9205 cell
wailukusue@gmail.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Ms. Susan Halas
1939A Vineyard Street
Wailuku, HI 96793
wailukusue@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Halas:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I write to comment on the EIS submitted in conjunction with the A&B application for a 30 year water lease for island of Maui.*

I found the projections of the amount of water needed for agricultural use unreasonably high and unsubstantiated by the applicant A&B or its successor Mahi Pono.

Response 1: We acknowledge your comments. With regards to your comment about the projections of the amount of water needed for the Mahi Pono farm plan, note that presently, Mahi Pono is unable to irrigate the majority of the agricultural fields in Central Maui to provide groundcover due to the water limitations under the terms of its current water revocable permits. Moreover, it will not be able to do so in the future without the proposed Water Lease. This will render lands uncultivated or unused, due to lack of water. As a result, the land in Central Maui will revert to its natural arid condition which is susceptible to wind-blown erosion. The Draft EIS provided a table projecting the Mahi Pono water use for full development of the farm plan. To better explain how much water is available now and expected for the near term for

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agricultural groundcover, Section 2.1.4 of the Final EIS has been updated with more current water projections as shown on pages 2-30 and 2-32.

However, in order to implement Mahi Pono's full build-out farm plan, approximately 82.33 mgd is needed to irrigate the majority of the approximate 30,000 acres in Central Maui.

Comment 2: *I think 30 years is an unreasonably long period to assign such a large amount of public water to a private owner especially with no established track record in this state and allegations of speculation, profiteering and conflict of interest lurking in the wings.*

Response 2: With regards to your comment about the length of the lease, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations and crops that may take years to reach economic viability.*" The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live

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technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

With regards to your comment about Mahi Pono not having a track record, please note that Mahi Pono has been farming the Central Maui agricultural fields since they were sold A&B's former sugarcane land in December 2018 and has been expanding their agricultural operations since then. It is acknowledged that Mahi Pono is new entity that has just been recently formed with the goal of operating a large diversified agriculture farm in Hawai'i. However, in its first 18 months of existence, Mahi Pono has hired over 200 workers from Maui, most of whom have farm experience on the island. In addition, Mahi Pono's management has significant experience cultivating diverse crops on more than 100,000 acres on the continental U.S. Also, the company has established market channels, and substantial financial resources. The Mahi Pono farm plan is discussed not only in the Executive Summary, but in detail in Section 2.1.4. and Section 4.7.4, as well as Appendix I. Water requirements for 2030 are discussed in Subsection 9.a of Appendix I, with details provided in Table 3, Section 3.a of Appendix I. This table includes average daily per-acre water requirements by crop. Production figures are discussed in Subsection 10.a, with details provided in Table 4, Section 4.a of Appendix I.

The Mahi Pono farm plan will evolve over time based on a number of factors, including the available supply of surface water, experience which will be gained on crops that grow well in Central Maui, crops that are profitable, the size of the market for profitable crops, etc.

Comment 3: *The massive EIS does not adequately address the question of the **public interest in this situation** and instead floods the decision making body with a massive amount of irrelevant and slanted information.*

I urge you to deny this application and reject the assertions of A&B and Mahi Pono and reopen the bidding to other qualified applicants.

Response 3: We acknowledge your comments. However, your comment about public interest is unclear. Note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). Moreover, over 400 comments were received in response to the Draft EIS. The Social Impact Assessment and the Cultural Impact Assessment also conducted community outreach in conjunction with this EIS process to analyze social and cultural impacts of the Proposed Action. Hence, we believe that the public interest is adequately captured in the EIS.

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We respectfully disagree with your comment that the EIS ‘floods the decision making body with a massive amount of irrelevant and slanted information.’ The Proposed Action implicates complex substantive issues with long histories. The EMI Aqueduct System has been diverting East Maui stream water for over a century as discussed in Section 1.3.2 of the Draft EIS. A&B's request that the Board of Land and Natural Resources (BLNR) offer a long-term (30-year) water lease at public auction was made on May 14, 2001 and has yet to be acted upon due to a series of regulatory and legal challenges. The proceedings before the Commission on Water Resource Management (CWRM) started in 2001 and only concluded in June 2018. In May 2001, Native Hawaiian Legal Corporation (NHLC) filed 27 petitions to amend the interim instream flow standards (IIFS) for numerous streams within the License Area on behalf of Nā Moku ‘Aupuni ‘O Ko‘olau Hui (Nā Moku), Beatrice Kepani Kekahuna, Marjorie Wallett, and Elizabeth Lehua Lapenia (IIFS petitions). The IIFS proceedings concluded 17 years later, in June 2018, with CWRM's issuance of its Findings of Fact, Conclusion of Law and Decision and Order in CCH-MA13-01 (CWRM D&O). The Draft EIS addresses this historical perspective, as required under HAR § 11-200-17.

We also note that the actual text of the Draft EIS is approximately 560 pages, which includes numerous graphics, and there are a total of thirteen appendices, nine of which were completed by technical consultants.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

Dalton Beuprez

From: Susanna SeaFire <sea.fire.enchantment@gmail.com>
Sent: Thursday, November 7, 2019 11:11 AM
To: Ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease)

From: Susanna Pol
To: Ian Hirokawa, Earl Matsukawa
Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Keanae, Honomanū, and Huelo License Areas

Please accept my comments on the subject DEIS.

I care very deeply about this proposed lease of public water because I'm a concerned upcountry Maui resident and hiker who uses the East Maui watershed lands.

The EIS needs to discuss the option of not diverting any streams, and discuss how that would benefit East Maui ecosystems and East Maui communities.

- The EIS should include discussion of a plan and funding to manage the invasive species in the license area. These invasive plants and animals are hurting the health and the function of the watershed lands.
- The EIS should give an in-depth review of and discuss the benefits of shorter term lease options of less than 30 years, due to uncertainties of future rainfall and future water supplies.
- The EIS should discuss the benefits of creating more options for more public hiking access to public lands in the proposed lease area without every hiker needing to get permission from EMI.
- In the past, stagnant pools along diverted streams have been breeding grounds for mosquitos that carried Dengue fever virus to East Maui residents. The EIS needs to discuss the role that diverted streams have on mosquito populations in East Maui, and the impact that resuming diversions will have on people living and/or visiting the area.
- The EIS needs to discuss methods of restoring the 13 streams in the Honopou to Kailua area, where lots of people live and farm and gather. All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. The EIS needs to discuss the impacts of continuing those diversions, which will decimate 85% of native stream habitat and impact thousands of local residents.

I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.

Aloha,
Susanna Pol



WILSON OKAMOTO
CORPORATION
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Ms. Susanna Pol
Sea.fire.enchantment@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Pol:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments on the subject DEIS.*

I care very deeply about this proposed lease of public water because I'm a concerned upcountry Maui resident and hiker who uses the East Maui watershed lands.

Response 1: We acknowledge your comments and understand that you are an Upcountry Maui resident.

Comment 2: *The EIS needs to discuss the option of not diverting any streams, and discuss how that would benefit East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to

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enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

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Comment 3: *The EIS should include discussion of a plan and funding to manage the invasive species in the license area. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 3: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Comment 4: *The EIS should give an in-depth review of and discuss the benefits of shorter term lease options of less than 30 years, due to uncertainties of future rainfall and future water supplies.*

Response 4: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the

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lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80 of the Final EIS, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 5: *The EIS should discuss the benefits of creating more options for more public hiking access to public lands in the proposed lease area without every hiker needing to get permission from EMI.*

Response 5: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could

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conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 6: *In the past, stagnant pools along diverted streams have been breeding grounds for mosquitos that carried Dengue fever virus to East Maui residents. The EIS needs to discuss the role that diverted streams have on mosquito populations in East Maui, and the impact that resuming diversions will have on people living and/or visiting the area.*

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Response 6: With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-61.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Mauistreams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Comment 7: *The EIS needs to discuss methods of restoring the 13 streams in the Honopou to Kailua area, where lots of people live and farm and gather. All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. The EIS needs to discuss the impacts of continuing those diversions, which will decimate 85% of native stream habitat and impact thousands of local residents.*

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Response 7: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-61 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at

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impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 8: *I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.*

Response 8: We acknowledge your comments and offer you detailed responses to each of your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: sylvialitchfield@everyactioncustom.com on behalf of Sylvia Litchfield
<sylvialitchfield@everyactioncustom.com>
Sent: Saturday, October 12, 2019 11:33 AM
To: Public Comment
Subject: EIS for the diversion of East Maui streams

Dear Mr. Matsukawa,

Diversion of East Maui streams is not the right direction to go in for Maui's environment. What is needed is to stop the diversions and restore these important ecosystems.

Restricting use of public lands is also the wrong direction - hiking access for the public should be increased.

These are but two of the many land management issues at stake. The mismanagement of public lands and water on Maui should not continue as it has in the past. This is the wrong direction to go in! Grabbing land and water from the public for private profit needs to stop.

Thank you for hearing our comments.

Sincerely,
Sylvia Litchfield
415 Dairy Rd Ste E414 Kahului, HI 96732-2348 sylvialitchfield@gmail.com



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Ms. Sylvia Litchfield
415 Dairy Road, Suite E414
Kahalui, HI 96732
sylvialitchfield@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Litchfield:

Thank you for comments dated October 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Diversion of East Maui streams is not the right direction to go in for Maui's environment. What is needed is to stop the diversions and restore these important ecosystems.*

Response 1: We acknowledge your comments. It is generally known that water can aid in the regeneration of an ecosystem. Please note that the HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to determine an appropriate balance between instream and offstream water uses. Impacts to stream habitats and native amphidromous stream species, are analyzed in Section 4.2.1 and Appendix A of the EIS. Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B of the EIS. Impacts to terrestrial flora and fauna, including threatened and endangered species, are analyzed in Section 4.4 and Appendix C of the EIS.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed

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management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Comment 2: *Restricting use of public lands is also the wrong direction - hiking access for the public should be increased.*

Response 2: Please note that the Proposed Action does not restrict public access to the License Area. In any event, public access within portions of the License Area has been provided, as discussed in Section 4.8 of the Draft EIS, and it is expected either that public access will continue if the scope of the License Area remains the same, or, if the License Area is reduced, that public access within the former License Area lands will be dictated by a State agency. However, please note that Section 4.8 of the Final EIS, has been revised as shown on pages 4-305 to 4-309 to include more recreational facilities and an accurate discussion regarding access into the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the "Modified Lease Area" alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access

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into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access to areas that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding impacts to the areas that would allow for more public access. Moreover, impacts of the Modified Lease Area alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories

Comment 3: *These are but two of the many land management issues at stake. The mismanagement of public lands and water on Maui should not continue as it has in the past. This is the wrong direction to go in! Grabbing land and water from the public for private profit needs to stop.*

Thank you for hearing our comments.

Response 3: We acknowledge your comments. Please note that we provided you detailed responses to each of your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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September 3, 2021

Keola Cheng

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

Dalton Beauprez

From: Tara Grace <taragrace808@gmail.com>
Sent: Tuesday, November 5, 2019 8:10 PM
To: ian.c.hirokawa@hawaii.gov
Cc: Public Comment
Subject: Fwd: EIS

Aloha,
please acknowledge receipt of this email.

Firstly, I need more time to read this 2700 + page document. The time allotted our community is unrealistic for those I spoke with. Full time busy schedules, family & home, leaves very little time within a tight 45 day window to address a topic as important as a 30 year lease of our water system of east Maui.

I request an extension. I know many folks who wanted to write a testimony.

Secondly: I understand the East Maui Watershed Partnership has a study related to land way above the 1,000 ft elevation. Where is the study reflecting the data for all streams at that elevation to the dea?? Seems there should be a full body of research, as the major concern is of the east Maui streams. This needs to be included for a comprehensive report.

Thirdly, I do not agree that only the central valley has substantial potential to grow usefl food crops. Can this be proven?

I have little time , I'm so tired tonight. I want to write at least 10 pages of my testimony. This must be extended. A&B did not give enough time for our community to express ourselves.

mahalo
Tara Grace

Tara Grace
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Dalton Beauprez

From: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Sent: Wednesday, November 6, 2019 8:44 AM
To: Tara Grace
Cc: Public Comment
Subject: RE: EIS

Dear Ms. Grace,

Confirming receipt, thank you for submitting your comments.

Sincerely,
 Ian Hirokawa

From: Tara Grace <taragrace808@gmail.com>
Sent: Tuesday, November 5, 2019 8:10 PM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Cc: waterleaseeis@wilsonokamoto.com
Subject: Fwd: EIS

Aloha,
 please acknowledge receipt of this email.

Firstly, I need more time to read this 2700 + page document. The time allotted our community is unrealistic for those I spoke with. Full time busy schedules, family & home, leaves very little time within a tight 45 day window to address a topic as important as a 30 year lease of our water system of east Maui.

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mahalo
 Tara Grace

Tara Grace
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10238-04
September 3, 2021

Ms. Tara Grace
Taragrace808@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Grace:

Thank you for comments dated November 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Firstly, I need more time to read this 2700 + page document. The time allotted our community is unrealistic for those I spoke with. Full time busy schedules, family & home, leaves very little time within a tight 45 day window to address a topic as important as a 30 year lease of our water system of east Maui.*

I request an extension. I know many folks who wanted to write a testimony.

Response 1: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 2: *Secondly: I understand the East Maui Watershed Partnership has a study related to land way above the 1,000 ft elevation. Where is the study reflecting the data for all streams at*

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that elevation to the dea?? Seems there should be a full body of research, as the major concern is of the east Maui streams. This needs to be included for a comprehensive report.

Response 2: Please note that we are not aware of this study that you are referring to as it relates to the East Maui Watershed Partnership. As discussed in Section 2.1 of the Draft EIS, A&B was a founding member of the East Maui Watershed Partnership (EMWP), which was the first watershed partnership in the State of Hawai'i and which served as a model for other watershed partnerships throughout the State. The lands under the jurisdiction of the East Maui Watershed Partnership span over 100,000 acres which includes the entire License Area. The License Area is actively managed by the multiple agencies and organizations, including EMWP, Maui Invasive Species Committee (MISC), DLNR, etc., in partnership with EMI. EMI continues to work with MISC by reporting sighting of invasive weeds and coordinating access in these areas, which are well below the 3,000' level. EMI personnel also monitor the License Area for signs of feral ungulates.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Comment 3: *Thirdly, I do not agree that only the central valley has substantial potential to grow useful food crops.*

Can this be proven?

Response 3: Please note that nowhere in the Draft EIS is it stated that Central Maui has the only substantial potential to grow useful food crops. The Central Maui agricultural fields at issue in this

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EIS consist of approximately 30,000 acres of cultivatable land as discussed in Chapter 4 of the Draft EIS. Specifically, Chapter 4 of the Draft EIS states:

For the purposes of this DEIS, Central Maui is comprised of the approximately 30,000 acres of agricultural land that had been cultivated with sugarcane for over a century utilizing water from the EMI Aqueduct System. Geographically, what is referred to as Central Maui encompasses approximately 36,000 acres, but approximately 6,000 acres is comprised of uncultivated areas, including roads, gulches, and patches of uncultivated land as shown in Figure 4-1.

Please note that the above has also been added to the Executive Summary as shown on pages iii to iv.

As summarized in Section 4.7.4 of the Draft EIS and Appendix I (East Maui Water Lease: Agricultural and Related Economic Impacts):

Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

The basis for this finding is given in Subsection 5 of Appendix I of the Draft EIS, along with Figures 4 to 12 in Appendix I of the Draft EIS.

Moreover, as discussed in Section 5 of Appendix I and Section 4.7.4 of the Draft EIS, the overwhelming majority of the Central Maui agricultural fields (approximately 80%) are rated by the UH Land Study Bureau (LSB) as having the highest Overall Productivity Rating of "A" (on a scale of "A" to "E" with "E" being the lowest soil rating), and a little over 11% has a "B" rating. In other words, about 27,567 acres (90.9%) are high-quality lands rated A or B. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Classification System, developed and compiled in 1977 by the State Department of Agriculture with assistance from the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), and the College of Tropical Agriculture, University of Hawai'i. Approximately 25,669 acres of the Central Maui agricultural fields are classified under the ALISH system as "Prime", which means "agricultural land which is land that is best suited for the production of crops because of its ability to sustain high yields with relatively little input and with the least damage to the environment." Also, as discussed in Section 5.1.4 of the EIS and Section 5 of Appendix I, approximately 22,000 of the 30,000 acres of agricultural fields in Central Maui are designated as Important Agricultural Lands (IAL). Under

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Article XI, Section 3, of the Constitution of Hawai‘i, the State is required to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. HRS Chapter, 205, § 205-41 through § 205-52, provides for the designation of IAL. As stated in HRS Chapter 205: “*The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations.*” IAL designation facilitates the long-term dedication of lands for future agricultural use so long as there is a sufficient supply of water to allow for profitable farming.

However, the EIS and the associated technical studies do not claim that only Central Maui has the substantial potential to grow useful food crops for Maui’s future. As discussed in Section 2.1 of the Draft EIS, the scope of this EIS is to assess the Proposed Action which is, “*...to enable the Board of Land and Natural Resources (BLNR)-awarded lessee the right, privilege and authority to enter and go upon State-owned lands for the purposes of developing, diverting, transporting and using government-owned waters. The requested Water Lease would allow the use of government-owned waters from the License Area (approximately 33,000 acres which includes lands within Nāhiku, Ke‘anae, Honomanū, and Huelo) through the East Maui Irrigation Company, LLC (EMI) Aqueduct System. Use of that surface water would allow the continued provision of water to enable approximately 30,000 acres of farmland in Central Maui to remain in agriculture.*” Hence, the EIS assesses the action of obtaining a Water Lease and diverting water from East Maui. With regards to agriculture, under the Proposed Action, a major portion of the diverted water from East Maui would be used to irrigate the agricultural fields in Central Maui to continue to transition to diversified agriculture.

Comment 4: *I have little time , I'm so tired tonight. I want to write at least 10 pages of my testimony.*

This must be extended. A&B did not give enough time for our community to express ourselves.

Response 4: As noted in Response #1 above, the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –

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Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Joe Ritter <joeritter3@yahoo.com>
Sent: Thursday, November 7, 2019 4:24 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas Aloha,

Aloha,

The Draft EIS does not mandate standards for monitoring and streamflow compliance. A correctly done EIS should include an evaluation and examination of the possible impacts of this 30-year lease on our fisheries and nearshore gathering areas.

30 years is far too long. I object to this use of natural resources. It is not in the public interest.

You have a constitutional requirement of upholding the public trust. This DEIS and proposed arrangement will not.

I look forward to the opportunity to provide further comments on the Final EIS.

Aloha,

Terez Amato Maui resident



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10238-04
September 3, 2021

Terez Amato
Joeritter3@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Terez Amato:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The Draft EIS does not mandate standards for monitoring and streamflow compliance. A correctly done EIS should include an evaluation and examination of the possible impacts of this 30-year lease on our fisheries and nearshore gathering areas.*

Response 1: You are correct. An EIS does not mandate or authorize any decision. An EIS is an environmental disclosure document and in this case the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

With regards to the 2018 CWRM D&O, On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their

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flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

With regards to nearshore fisheries, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on the pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui

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stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on the pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on the pages 4-78 to 4-83 of the Final EIS.

Comment 2: *30 years is far too long. I object to this use of natural resources. It is not in the public interest.*

Response 2: We acknowledge your comments. With regards to a shorter lease duration, Section 3.2.2.1 of the Draft EIS, discussing the Alternative Lease Duration alternative, explains that "*a lease term shorter than 30 years could limit the ability of Mahi Pono or a lessee to obtain financing for the needed investment in establishing successful diversified agricultural operations*

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and crops that may take years to reach economic viability." The Alternative Lease Duration alternative is nevertheless fully analyzed in Section 3.2.2.1. The Agricultural and Related Economic Impacts report provided as Appendix I to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to complete the implementation of its proposed farm plan across its 30,000 acres of Central Maui agricultural land, including the removal of volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which take 5-12 years to reach full maturity, after which the trees will provide yields for 35 to over 100 years. This is a long-term commitment to farming, and needs long-term access to a reliable source of irrigation water.

Under the Alternative Lease Duration alternative, assuming a water lease shorter than the requested 30 years, the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed because of the risk of not being able to farm for a long enough period to recover their planned investment. Moreover, it is not unreasonable to expect that a return should be made on an investment in farming, particularly the magnitude of the investment that is required to return these 30,000 acres back to a sustainable diversified farming operation. As just one example, Mahi Pono expects to invest over \$20 million to increase the efficiency of its private, on-farm Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from the Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Financing may be sought for various aspects of the total investment, and financing organizations/banks will seek assurance of the financial stability of the farming operation to ensure the loan will be paid back, including assurance of a reliable source of irrigation water for at least the term of the loan.

Comment 3: *You have a constitutional requirement of upholding the public trust. This DEIS and proposed arrangement will not.*

Response 3: Regarding your comment about the mandated protection of the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has

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already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

Comment 4: *I look forward to the opportunity to provide further comments on the Final EIS.*

Response 4: We acknowledge your comments. Please note that we have provided you with detailed responses to your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beuprez

From: tom@rainbowridgewest.com
Sent: Thursday, November 7, 2019 10:41 AM
To: ian.c.hirokawa@hawaii.gov; Public Comment; chris@rainbowridgewest.com
Subject: COMMENTS on DEIS A&B Water Lease

ian.c.hirokawa@hawaii.gov
 waterleaseeis@wilsonokamoto.com

Aloha kahou,

Below are my comments for related to the Draft Environmental Impact Statement (DEIS), September 2019, for the Proposed Water Lease for the Nāhiku, Ki;anae, Honomanū and Huelo License Areas.

Mahalo,

Thomas Bacon, PO Box 1032, Hana, HI, 96713 tom@rainbowridgewest.com

- Please extend the comment period due to the lengthy nature of the document and the importance of this issue to the community. TO ACHIEVE THIS, A&B SHOULD WITHDRAW ITS DEIS AND RESUBMIT IT FOR PUBLICATION IN THE ENVIRONMENTAL NOTICE WITHOUT ALTERATIONS. This short delay is minor in comparison to the 30-year lease that is sought, and will ensure community members who have direct knowledge of the potential impacts of the proposed lease have an opportunity to offer their comments and strengthen the process.
- The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species, and does not address the impact of stream restoration on recently restored streams and muliwai. Cultural practitioners and aquatic experts need to address changes in 'o'opu, hīhīwai and 'ōpae populations they have seen where flows have been restored recently, and this should be part of the environmental impact analysis.
- The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands and require a management plan and funding. How is it possible to analyze the environmental impact of a plan that doesn't exist? Where in the DEIS does it address the impact of potentially not managing the invasive species?
- The DEIS does not include analysis of an alternative to split the system into service area units. For example, Nahiku has a dedicated pipe from its source to the County Water system, using the ditch and tunnels only to support the pipe. A separate utility could possibly take over this portion of the lease area. The DEIS omits details which are needed to make these alternative analyses.
- The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for over 100 years as the "baseline condition". It does not address the impacts of operation and maintenance of the system which alter the natural baseline condition. The DEIS needs to focus on an option of no diverted streams and how that would benefit the East Maui ecosystems and communities.
- The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of demand, future rainfall and future water supplies. How do the uncertainties of the Mahi Pono agricultural needs, the same uncertainties they describe in their vague agricultural plans, support the concept of a 30 year commitment?
- The DEIS needs to include a Watershed Management Plan. The methods of managing the watershed for the next 30 years, including access management, have a huge impact on the environment and should be addressed before the DEIS is reviewed. Limiting access needs to be addressed.

- In the Cultural Impact Analysis, Section 7.6 Impacts and Recommendations, the DEIS recommends professional analysis by cultural, ethnobotanical, scientific and/or biological experts as the way to address impact questions of various alternatives. This analysis should be completed in the DEIS, rather than leaving than deferring these elements which have environmental impacts.
- The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.
- The DEIS needs to address the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Mr. Thomas Bacon
P.O. Box 1032
Hana, HI 96713
tom@rainbowridgewest.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Bacon:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please extend the comment period due to the lengthy nature of the document and the importance of this issue to the community. TO ACHIEVE THIS, A&B SHOULD WITHDRAW ITS DEIS AND RESUBMIT IT FOR PUBLICATION IN THE ENVIRONMENTAL NOTICE WITHOUT ALTERATIONS. This short delay is minor in comparison to the 30-year lease that is sought, and will ensure community members who have direct knowledge of the potential impacts of the proposed lease have an opportunity to offer their comments and strengthen the process.*

Response 1: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai‘i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

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Comment 2: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species, and does not address the impact of stream restoration on recently restored streams and muliwai. Cultural practitioners and aquatic experts need to address changes in 'o'opu, hīhīwai and 'ōpae populations they have seen where flows have been restored recently, and this should be part of the environmental impact analysis.*

Response 2: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30%

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Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Please note that the HSHEP model includes 'o'opu, hīhīwai and 'opae within its analysis, and overall their habitats are anticipated to improve under the Proposed Action. With regards to cultural practitioners, Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact

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is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-158 to 4-159. The CIA, and Section 4.6 of the EIS on pages 4-239 to 4-252 of the Final EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

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Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Comment 3: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands and require a management plan and funding. How is it possible to analyze the environmental impact of a plan that doesn't exist? Where in the DEIS does it address the impact of potentially not managing the invasive species?*

Response 3: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including

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calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Please note that scope of the EIS is not to assess a watershed management plan, but rather assess the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Please note that Appendix C and Section 4.4 of the EIS discuss mitigation measures to minimize impacts to invasive species in the License Area which have been further expanded on based on comments received by the DLNR and the USFWS as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131.

Comment 4: *The DEIS does not include analysis of an alternative to split the system into service area units. For example, Nahiku has a dedicated pipe from its source to the County Water system, using the ditch and tunnels only to support the pipe. A separate utility could possibly take over this portion of the lease area. The DEIS omits details which are needed to make these alternative analyses.*

Response 4: HAR §11-200-17(f) requires an analysis of alternatives to the proposed action "*which could attain the objectives of the action.*" The objectives of the Water Lease (i.e., the Proposed Action), as stated in Section 1.2 of Draft EIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku. Hence, this alternative would not meet the objectives of the Proposed Action.

Specifically, Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the

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Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3. Moreover, based on comments received on the Draft EIS, the alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the Final EIS.

Comment 5: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for over 100 years as the “baseline condition”. It does not address the impacts of operation and maintenance of the system which alter the natural baseline condition. The DEIS needs to focus on an option of no diverted streams and how that would benefit the East Maui ecosystems and communities.*

Response 5: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be

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issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of demand, future rainfall and future water supplies. How do the uncertainties of the Mahi Pono agricultural needs, the same uncertainties they describe in their vague agricultural plans, support the concept of a 30 year commitment?*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters.

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However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80 of the Final EIS, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS needs to include a Watershed Management Plan. The methods of managing the watershed for the next 30 years, including access management, have a huge impact on the environment and should be addressed before the DEIS is reviewed. Limiting access needs to be addressed.*

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Response 7: Noted in Response #3 above, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Comment 8: *In the Cultural Impact Analysis, Section 7.6 Impacts and Recommendations, the DEIS recommends professional analysis by cultural, ethnobotanical, scientific and/or biological experts as the way to address impact questions of various alternatives. This analysis should be completed in the DEIS, rather than leaving than deferring these elements which have environmental impacts.*

Response 8: As noted in Response #2 above, the studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

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Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Comment 9: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 9: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

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Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided in pages 4-61 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 10: *The DEIS needs to address the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

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Response 10: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-61.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Mauistreams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for

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Letter to Mr. Thomas Bacon

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review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beuprez

From: Tom Blackburn-Rodriguez <tominmaui@me.com>
Sent: Tuesday, October 29, 2019 6:43 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: DEIS East Maui Water Lease Comments from Tom Blackburn-Rodriguez

Scott J. Glenn
Director
Office of Environmental Quality Control
Department of Health, State of Hawaii
235 South Beretania Street, Room 702
Honolulu, Hawaii 96813

Suzanne Case
Chairperson
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street
Honolulu, Hawaii 86813

RE: DEIS FOR PROPOSED LEASE (WATER LEASE) FOR NAHIKU, KE'ANAE, HONOMANU, AND HUELO LICENSE AREAS

Dear Mr. Glenn and Ms. Case,

A few thoughts. It might be useful for a Comparative Summary of various alternatives and their respective environmental impacts as outlined in Chapter 3 of the Draft EIS.

The publication of the DEIS is an important milestone, marking progress in the state water lease process, and providing a visible indicator of the desire—A&B/EMI's, Mahi Pono's and the State's —to get off of one-year permits and have a long-term lease offered at public auction. This is critical for Maui's agricultural future.

This long-term lease for East Maui waters is important for a future of sustainable and viable agriculture across the Central valley of Maui, and a reliable source of water for Upcountry Maui communities.

The document is well written and I recommend its approval.

Tom Blackburn-Rodriguez
808-283-4570
tominmaui@icloud.com
85 Manino Circle #202
Kihei, HI 96753



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10238-04
September 3, 2021

Mr. Tom Blackburn-Rodriguez
85 Manino Circle #202
Kihei, HI 96753
tominmaui@me.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Blackburn-Rodriguez:

Thank you for comments dated October 29, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *A few thoughts. It might be useful for a Comparative Summary of various alternatives and their respective environmental impacts as outlined in Chapter 3 of the Draft EIS.*

Response 1: We acknowledge your comments. Please note that a table of the comparative benefits and impacts has been added to Section 3.5 of the Final EIS summarize all the benefits and impacts from the Proposed Action and reasonable alternatives as shown on pages 3-49 to 3-80 of the Final EIS.

Comment 2: *The publication of the DEIS is an important milestone, marking progress in the state water lease process, and providing a visible indicator of the desire—A&B/EMI’s, Mahi Pono’s and the State’s—to get off of one-year permits and have a long-term lease offered at public auction. This is critical for Maui’s agricultural future.*

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Letter to Mr. Tom Blackburn-Rodriguez
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This long-term lease for East Maui waters is important for a future of sustainable and viable agriculture across the Central valley of Maui, and a reliable source of water for Upcountry Maui communities.

The document is well written and I recommend its approval.

Response 2: We acknowledge your comments and understand that you perceive the Draft EIS as an important milestone for the Proposed Action.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainability Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website¹. Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: hilorain@everyactioncustom.com on behalf of Tom Walsh
<hilorain@everyactioncustom.com>
Sent: Tuesday, October 8, 2019 5:27 PM
To: Public Comment
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement

Dear Mr. Matsukawa,

Don't allow the continued diversion of wai from the east Maui watershed. 100 years is enough! Time to restore the natural stream flows.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Tom Walsh
95 Ku Dr Wailuku, HI 96793-2459
hilorain@hawaiiantel.net



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10238-04
September 3, 2021

Mr. Tom Walsh
95 Ku Drive
Wailuku, HI 96793
hilorain@hawaiiantel.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Walsh:

Thank you for comments dated October 8, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Don't allow the continued diversion of wai from the east Maui watershed. 100 years is enough! Time to restore the natural stream flows.*

Response 1: We acknowledge your comments and understand that you are opposed to the Proposed Action. Please note that Section 3.3 of the Draft EIS discusses the No Action alternative whereby no Water Lease is issued. As discussed in Section 3.3 of the Draft EIS:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS. At this point in time, it is unknown whether sufficient groundwater resources exist in Upcountry Maui to meet these water demands. It is anticipated that the development of alternative water-source infrastructure would be prohibitively

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expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment.

Hence, there would be adverse impacts to the Upcountry Maui Water System.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beauprez

From: Trinette Furtado <peles808grrl@gmail.com>
Sent: Thursday, November 7, 2019 10:02 AM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: RE: Draft Environmental Impact Statement (DEIS) for the Proposed Lease...

07. Nowemapa. 2019

To: Ian Hirokawa, State of Hawai`i Board of Land & Natural Resources
 Earl Matsukawa, Wilson Okamoto Corporation

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas

Aloha,

My name is Trinette Furtado and I was born and raised on this mokupuni o Mauinuiakama. I grew up in Lahaina and now reside in Kula with my daughter, who was also born here and is being raised here because this is our papahānau. Mahalo for the opportunity to comment on the subject Draft EIS.

I care very deeply about this proposed lease of public water because I not only work for my community in County government, addressing issues that concern our `āina and governance, but also because I am raising a child here. I want my daughter and her contemporaries and the generations to come after them, to have a vital, thriving, healthy `āina that can continue to provide their bodily and spiritual sustenance. We are people of this land. I believe we need to make sure that requests such as these from our community and our resource should be properly and thoroughly vetted.

I would like to point out that not extending the 45-day period for public comment on a document that is 2,700 pages is preposterous, considering the request of our public trust resource that is being made. The applicant requests a permit guaranteeing water for 30 years at a time (environmentally) when we are working towards planning and implementing proper stewardship of our natural resources. For this very reason, this comment period should have been extended.

The Final EIS should contain information that can adequately address these questions and concerns:

1. Why weren't the alternatives (if the 30-year lease is denied) outlined in the Draft EIS evaluated more thoroughly? Why not evaluate possible benefits also, rather than focusing on possible negatives? A Water Lease with Different Terms could evaluate a Systematic Yearly Reduction to incentivize best water use practices. The Final EIS should include a more thorough examination and evaluation of alternative actions.
2. The Final EIS should include an analysis of the applicant's currently owned wells that could be used for their agricultural irrigation.
3. Variations in their crop types, the land being utilized and future water demands are uncertain.
 1. The Final EIS should address potential impacts on this lease if water needs increase/decrease or if the economic viability of the applicant cannot be sustainable by forecasted agricultural practices.
4. This subject Draft EIS contains no assurances that current streamflow standards will be monitored for compliance; Currently, 10 E. Maui streams have not been "restored".
 1. The Final EIS should contain information regarding these 10 streams and their impacts on/contributions to, the water delivery system.
5. Freshwater interface with the ocean at the muliwai is one of the most plentiful areas for fish and plantlife that comprise much of the food we include in our diets. For the health and productivity of our fisheries and

nearshore gathering areas, the Final EIS should include an evaluation and examination of the possible impacts of this 30-year lease on our fisheries and nearshore gathering areas.

6. Appendix D, Historical Structure Assessment of the subject Draft EIS is woefully inadequate, as it is stated that the report “is less an inventory, and more a reference/typology guide for irrigation systems and their components”. This offers no real data concerning non-evaporative loss throughout the delivery system, to help calculate true use, loss and recharge.
 1. The Final EIS should include a proper structure assessment that involves evaluating the viability of these structures that will be part of the daily water delivery system. The report should not just be a reference/typology guide.

I am asking that the Final EIS include this important information.

I do have further concerns but with the short timeline given, cannot state them all. I look forward to the opportunity to provide further comments on the Final EIS and once again thank you for this opportunity to submit comments on this Draft EIS.

Aloha,
Trinette Furtado
Kula, Maui, Kō Pae `Āina Hawai`i

"Its never too late to be what you might have been."
Sent from my iPad



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10238-04
September 3, 2021

Ms. Trinette Furtado
Peles808grrl@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Furtado:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *My name is Trinette Furtado and I was born and raised on this mokupuni o Mauinuiakama. I grew up in Lahaina and now reside in Kula with my daughter, who was also born here and is being raised here because this is our papahānau.*

Mahalo for the opportunity to comment on the subject Draft EIS.

I care very deeply about this proposed lease of public water because I not only work for my community in County government, addressing issues that concern our `āina and governance, but also because I am raising a child here. I want my daughter and her contemporaries and the generations to come after them, to have a vital, thriving, healthy `āina that can continue to provide their bodily and spiritual sustenance. We are people of this land. I believe we need to make sure that requests such as these from our community and our resource should be properly and thoroughly vetted.

Response 1: We acknowledge your comments and understand that you are a Kula resident.

Comment 2: *I would like to point out that not extending the 45-day period for public comment on a document that is 2,700 pages is preposterous, considering the request of our public trust*

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resource that is being made. The applicant requests a permit guaranteeing water for 30 years at a time (environmentally) when we are working towards planning and implementing proper stewardship of our natural resources. For this very reason, this comment period should have been extended.

Response 2: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 3: *The Final EIS should contain information that can adequately address these questions and concerns:*

Why weren't the alternatives (if the 30-year lease is denied) outlined in the Draft EIS evaluated more thoroughly? Why not evaluate possible benefits also, rather than focusing on possible negatives? A Water Lease with Different Terms could evaluate a Systematic Yearly Reduction to incentivize best water use practices. The Final EIS should include a more thorough examination and evaluation of alternative actions.

Response 3: HAR §11-200-17(f) requires an analysis of alternatives to the proposed action "*which could attain the objectives of the action.*" The objectives of the Water Lease (i.e., the Proposed Action), as stated in Section 1.2 of Draft EIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku.

Specifically, Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not

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Letter to Ms. Trinetta Furtado

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assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3. Moreover, based on comments received on the Draft EIS, the alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the Final EIS.

Moreover, please note that Section 3.5 of the Final EIS includes a comparative table of the various alternatives and the associated impacts of each alternative as shown on pages 3-49 to 3-80.

Comment 4: *The Final EIS should include an analysis of the applicant's currently owned wells that could be used for their agricultural irrigation.*

Response 4: Regarding the use of well water, Draft EIS Section 2.1.4 (Central Maui Field System) explains:

In addition to the surface water imported from the EMI Aqueduct System to the Central Maui field irrigation system, the irrigation infrastructure includes fifteen brackish water wells that can supplement surface water to approximately 17,200 acres of the plantation at the lower elevations (CWRM D&O, FOF 738). These brackish wells extract groundwater from the subsurface aquifers lying beneath the agricultural lands, and which are cyclically dependent on recharge derived from the irrigation of the overlying lands by water from the EMI Aqueduct System. The remaining approximately 12,800 acres cannot be serviced by pumped ground water on a consistent basis due to their higher elevation, which makes the land uneconomical to reach with pumped water. Groundwater, however, can be delivered to 7,000 acres at higher elevations via a shared pipeline that served as a penstock line for a hydroelectric unit (CWRM D&O, FOF 739).

Draft EIS Figure 2-5 (Central Maui Infrastructure Map) identifies the wells in the Central Maui agricultural fields. However, please note that Section 2.1.4 has been revised in the Final EIS to more accurately describe the water infrastructure within the Central Maui agricultural fields that is available to Mahi Pono, and clarifies that only 10 of the 15 wells are on Mahi Pono lands and thus available for use by Mahi Pono, as shown on page 2-25 of the Final EIS.

The reference to 15 brackish wells was derived from the CWRM D&O, FOF 738, as that was the number of brackish wells that A&B utilized during its sugar cane operations. However, one of the 15 wells referred to, State Well No. 5128-002, does not serve the Central Maui agricultural fields and four of the other brackish wells are on lands that are not owned by Mahi Pono. As such, Mahi Pono has access to only 10 such wells. Draft EIS Figure 2-5 has been revised, as shown on page 2-24 of the Final EIS, to more accurately depict the water infrastructure within

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Letter to Ms. Trinette Furtado

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the Central Maui agricultural fields that is available to Mahi Pono to support its farm plan for the Central Maui agricultural fields. Moreover, please see the table below, which has been added to Section 4.2.2 of the Final EIS as shown on page 4-75.

State Well No.	TMK Number	Installed Pump Capacity (MGD)	Typical Range of Chlorides (MG/L) from 2003 through 2014 ¹	CWRM Delineated Aquifer System
4825-001	(2) 3-8-004:001	20.448	225 to 350	Pā‘ia
5226-002	(2) 3-8-006:001	24.048	350 to 550	Kahului
5224-002	(2) 3-8-003:004	15.120	350 to 550	Pā‘ia
5323-001	(2) 3-8-001:006	20.016	No data	Pā‘ia
5424-001	(2) 3-8-001:007	5.760	400 to 700	Pā‘ia
5522-001	(2) 2-5-005:021	8.640	350 to 525	Pā‘ia
5422-001	(2) 2-5-005:054	10.080	350 to 525	Pā‘ia
5422-002	(2) 2-5-005:020	11.664	325 to 475	Pā‘ia
5321-001	(2) 2-5-005:019	30.240	400 to 1600	Pā‘ia
5520-001	(2) 2-7-004:032	10.080	900 to 1600	Ha‘ikū

Please note that the salinity levels fluctuate and therefore a range was provided.

Comment 5: *Variations in their crop types, the land being utilized and future water demands are uncertain.*

Response 5: In response to your comment that crop types under the Mahi Pono farm plan are uncertain, as noted in the Draft EIS the Mahi Pono farm plan is, like any responsible farming plan, a fluid and responsive plan that responds to the ever-changing agricultural market demands and the type of agricultural activity to be pursued (i.e. orchard crops, tropical fruits, row and annual crops, energy crops, pasturage etc.), as well as responding to other variables such as the availability and cost of water for crop irrigation, and the need to be sensitive to the existing local farming community. Nevertheless, the currently proposed components of the Mahi Pono farm plan are provided in Table 2-1 (Mahi Pono Farm Plan) of the Draft EIS. . The calculations of future water requirements (year 2030) are presented in Table 3 of Appendix I, “East Maui Water Lease: Agricultural and Related Economic Impacts”. Plasch Econ Pacific LLC, June 2019 (PEP Report). The per-acre water requirements used in the calculations are based on published crop studies, farming experience with specific crops, and evapotranspiration rates for Central Maui.

¹ There is limited salinity data prior to 2003 and after December 2014, surface water for irrigation use rapidly declined as A&B ramped down operations prior to closing in 2016.

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There is no significant uncertainty about the land to be used. Mahi Pono intends to farm approximately 30,000 acres of agricultural land in Central Maui (lands that were farmed by HC&S for generations). Figure 2-6 of the Draft EIS provides a graphic depiction of the Mahi Pono farm plan.

Comment 6: *The Final EIS should address potential impacts on this lease if water needs increase/decrease or if the economic viability of the applicant cannot be sustainable by forecasted agricultural practices.*

Response 6: In Section 3.2.1, the Reduced Water Volume Alternative is assessed. Specifically, Section 3.2.1 states:

The BLNR cannot authorize a lease that allows the use of more water than can be diverted under the CWRM D&O. However, the BLNR could elect to issue a water lease that authorizes the use of a lesser amount of water. Projections of the amount of government water available from the License Area at Honopou stream after taking into account the CWRM D&O, is approximately 87.95 mgd. This amount would be subject to further reduction in accordance with the DHHL reservation once called upon for use by the DHHL. The CWRM estimated that the amount of water potentially available after implementation of the CWRM D&O might be enough for about 90% of the irrigation needs for the approximately 23,000 IAL lands in Central Maui (although it is not clear if the CWRM D&O took into account the future DHHL reservation). However, there are approximately 30,000 agricultural acres in Central Maui (largely, but not exclusively, IAL lands), and Mahi Pono has expressed an intention to farm as much of that land as possible.

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. Under the Reduced Water Volume alternative, depending on the amount of water authorized under the Water Lease, the MDWS may receive no water from the Wailoa Ditch or some amount up to 7.1 mgd. The greater the reduction in the amount authorized under the Water Lease, proportionally less water will be available to the MDWS.

If more or less water were to be required than is planned, then the Mahi Pono farm plan would be adjusted so that the demand for water is limited to the available supply. In practice, this would mean a transfer of acreage between crop farming and unirrigated pasture. If this were to result in a 1% change in crop acreage, then most economic impacts would change by about 1%. This

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occurs because crop farming dominates the economic impacts, far exceeding the impacts provided by cattle grazing.

As stated in Appendix I p. 34 of the PEP Report, the Mahi Pono farm plan

... will evolve over time based on a number of factors, including the available supply of surface water, experience which will be gained on crops that grow well in Central Maui, crops that are profitable, the size of the market for profitable crops, etc.

Another factor would be possible changes in per-acre water requirements.

Comment 7: *This subject Draft EIS contains no assurances that current streamflow standards will be monitored for compliance; Currently, 10 E. Maui streams have not been “restored”.*

Response 7: As noted in Section 2.1.4, 4.2.1, and 4.6 of the Final EIS as shown on pages 2-8, 4-62, 4-67, 4-242, 4-244, 4-247, and 4-251, the CWRM D&O requires EMI to report on changes in stream diversions and ditch settings as irrigation requirements increase. EMI also maintains a system of optical encoders with float tape and data loggers within the EMI Aqueduct System. The information obtained is reported to CWRM on a monthly basis.

Comment 8: *The Final EIS should contain information regarding these 10 streams and their impacts on/contributions to, the water delivery system.*

Response 8: Your comments are unclear. Please note that the fully restored streams will not be diverted by the EMI Aqueduct System at all. Hence, there will be no impacts. Upon making the voluntary commitment to permanently restore the stream flows in the “taro streams”, EMI returned approximately 90-95% of the natural flow of the streams—all that could be done by adjusting (opening or closing) the diversion gates. The final 5-10% to achieve complete restoration requires modifications to diversions, essentially construction projects, thus triggering various permitting processes that continue to be pursued.

Potential impacts from the abandonment of structures and equipment as it relates to native stream habitat was assessed and discussed in Appendix A, the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report.

The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water

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Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

However, please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals. Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

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The two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped.

Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts.

Th above is discussed in more detail in Section 4.2.1 of the Final EIS as shown on pages 4-63 to 4-67.

Comment 9: *Freshwater interface with the ocean at the muliwai is one of the most plentiful areas for fish and plantlife that comprise much of the food we include in our diets. For the health and productivity of our fisheries and nearshore gathering areas, ther Final EIS should include an evaluation and examination of the possible impacts of this 30-year lease on our fisheries and nearshore gathering areas.*

Response 9: We acknowledge your comments. Please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that

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were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on the pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

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Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83 of the Final EIS.

Comment 10: *Appendix D, Historical Structure Assessment of the subject Draft EIS is woefully inadequate, as it is stated that the report “is less an inventory, and more a reference/typology guide for irrigation systems and their components”. This offers no real data concerning non- evaporative loss throughout the delivery system, to help calculate true use, loss and recharge.*

Response 10: Please note that was not within the scope of the report contained as Appendix D. The scope of Appendix D was to determine the historical significance of the EMI Aqueduct System. However, We assume that your comment relates to the physical condition of the EMI Aqueduct System. In this regard, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System.

Comment 11: *The Final EIS should include a proper structure assessment that involves evaluating the viability of these structures that will be part of the daily water delivery system. The report should not just be a reference/typology guide.*

Response 11: As noted in Response #10 above, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and

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tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System.

Comment 12: *I am asking that the Final EIS include this important information.*

I do have further concerns but with the short timeline given, cannot state them all. I look forward to the opportunity to provide further comments on the Final EIS and once again thank you for this opportunity to submit comments on this Draft EIS.

Response 12: We acknowledge your comments and provided you with detailed responses to your comments above. However, please note that the Final EIS does not coincide with a public comment period as the Draft EIS does.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.² Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

² Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: Lucid Vibrations <stonerwailani5@gmail.com>
Sent: Friday, October 25, 2019 9:55 AM
To: Public Comment
Subject: Free the wai

To whom it may concern,

I am strongly opposed to leasing water rights to A&B for 30 years, 20 years or even 1 year to a corporation who profits from the water while our ecosystems die out and our people have to rely on anything other than their own ahupua'a. Let us people of the community have the water to grow our own healthy food. Not only does the corporation profit, they also spray poison, which drifts in the air we breathe, runs off into the ocean we swim and fish in, and kills everything in its path. The poison they spray is known to cause cancer, allergies, auto-immune issues, infertility, eczema, and birth defects. Who, in their right mind, would give our precious natural resources away, in exchange for being poisoned? Privatization of water is not only wrong, it is unsafe for the community, the environment and all natural resources. The diversion of water takes away the natural flow of mauka to makai that kills and ruins our thriving ecosystems. We need the waters to reach the ocean in order for a healthy Earth.

We have come to a time in history that you must choose what side you are on. Please choose the right side so our children and generations to come have a chance. Stop putting profits over the people. Money runs out, aloha 'āina never does.

Mahalo for taking the time to read.

Sincerely, Wailani Stoner



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Wailani Stoner
Stonerwailani5@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Wailani Stoner:

Thank you for comments dated October 25, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am strongly opposed to leasing water rights to A&B for 30 years, 20 years or even 1 year to a corporation who profits from the water while our ecosystems die out and our people have to rely on anything other than their own ahupua‘a. Let us people of the community have the water to grow our own healthy food.*

Response 1: We acknowledge your comments. Please note that with regards to growing healthy food, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

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Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Comment 2: *Not only does the corporation profit, they also spray poison, which drifts in the air we breathe, runs off into the ocean we swim and fish in, and kills everything in its path. The poison they spray is known to cause cancer, allergies, auto-immune issues, infertility, eczema, and birth defects. Who, in their right mind, would give our precious natural resources away, in exchange for being poisoned?*

Response 2: We acknowledge your comments. Mahi Pono has an inherent long-term interest in farming the Central Maui agricultural fields consistent with best practices that are most suitable for those lands. The Mahi Pono farm team, as well as its lessees, follow Best Management Practices (BMPs) approved by the Hawai‘i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in the use of chemicals, and controlling dust and erosion and runoff associated with their farming activities. As it relates to agricultural chemicals for diversified agriculture, usage would be in strict compliance with federal regulations and Mahi Pono will exercise due care to prevent the release of fuels, lubricants and other hazardous materials. Mahi Pono intends to use a limited amount of fertilizers and pesticides in accordance with all laws and regulations and only on an as-needed basis. In addition, as mentioned above, since January 2020, Mahi Pono has also committed to foregoing the use of Round-Up and other glyphosate-based products within the Central Maui agricultural fields and the EMI Aqueduct System.

Comment 3: *Privatization of water is not only wrong, it is unsafe for the community, the environment and all natural resources. The diversion of water takes away the natural flow of*

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mauka to makai that kills and ruins our thriving ecosystems. We need the waters to reach the ocean in order for a healthy Earth.

Response 3: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity

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flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 4: *We have come to a time in history that you must choose what side you are on. Please choose the right side so our children and generations to come have a chance. Stop putting profits over the people. Money runs out, aloha 'āina never does.*

Response 4: We acknowledge your comments. Thank you for your participation in this EIS process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: deegreen15@everyactioncustom.com on behalf of Wendy Green <deegreen15@everyactioncustom.com>
Sent: Wednesday, October 9, 2019 7:17 PM
To: Public Comment
Subject: Alexander and Baldwin's Draft EIS

Dear Mr. Matsukawa,

Aloha

Thank you for the opportunity to submit comments. I am in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. They have done enough damage!

There has not been enough analyzation of the effects of these diversions on the native ecosystems and stream habitats. In addition, how these diversions will impact the residents and local communities needs to be assessed. While they estimate the water will be diverted 60 percent of the time, nothing is mentioned about restoring the 13 streams in the Honopou to Kailua areas. Many people live and farm in these areas. We should be extremely concerned about them as well.

East Maui streams should not be diverted for agriculture in central Maui. We need to do better about holding these corporations accountable for the harm they've already caused to the East Maui Watershed. Long leases are not holding corporations accountable and they don't take into account future rainfall or water supply issues. We can do better!

Thank you for your time.

Sincerely,
Wendy Green
55 S Kukui St Apt 904 Honolulu, HI 96813-2321 deegreen15@gmail.com



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C O R P O R A T I O N
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10238-04
September 3, 2021

Ms. Wendy Green
55 S. Kukui Street, Apt. 904
Honolulu, HI 96816
Deegreen15@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Green:

Thank you for comments dated October 9, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Thank you for the opportunity to submit comments. I am in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. They have done enough damage!*

Response 1: We acknowledge your comments and understand that you are opposed to the Proposed Action.

Comment 2: *There has not been enough analyzation of the effects of these diversions on the native ecosystems and stream habitats. In addition, how these diversions will impact the residents and local communities needs to be assessed.*

Response 2: Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an

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EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

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Comment 3: *While they estimate the water will be diverted 60 percent of the time, nothing is mentioned about restoring the 13 streams in the Honopou to Kailua areas. Many people live and farm in these areas. We should be extremely concerned about them as well.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

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Comment 4: *East Maui streams should not be diverted for agriculture in central Maui. We need to do better about holding these corporations accountable for the harm they've already caused to the East Maui Watershed. Long leases are not holding corporations accountable and they don't take into account future rainfall or water supply issues. We can do better!*

Response 4: We acknowledge your comments. Thank you for your participation in this EIS process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

Dalton Beauprez

From: William Greenleaf <bgreenleaf.maui@yahoo.com>
Sent: Sunday, November 3, 2019 9:28 AM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Comments of EIS

The 2700 page EIS is filled with FEAR MONGERING...below are some questions I have regarding chapter 3...I am a farmer and know much of what they way about agriculture is inaccurate

3.16 in the EIS discusses in the no water alternative that Mahi Pono estimates the cost of wells to supply Upcountry users of 7.95MGD at \$1.2B.

This is an example of the scare tactics that permeate this document. This is a completely false supposition. Currently the County system above 3000' would still function via the Wailoa Ditch with two lines reaching Upcountry...Upper line goes to Ulapalakua and Lower line goes to Hawaii Homelands.

What research provided the \$1.2B estimate for drilling wells?

In Appendix I Mahi Pono describes E Maui as having 35 acres of truck farms and 44 acres of potential Kalo production areas.

Hawaiian's have had over 100 years of depleted water resources which has impacted cultural agriculture practices. To publish these numbers as an implied potential reveals that this EIS is not intending to stand on facts, rather to act as a threat to the community.

I did not see anything in the EIS preventing Mahi Pono from providing water to Hotels and Shopping Centers by the Airport.

Section 3.4.11 In light of MP intention to pursue diversified ag would lead to improved stewardship of EMIOngoing maintenance and operation of EMI is expected to take place under all alternatives, **to the extent operations and maintenance of the system is financially feasible.**

Another veiled threat by Mahi Pono in this EIS. Maintenance of the WaterShed has been severely neglected under the management of A&B. This EIS needs to describe the resources MahiPono intends to utilize to clean up the overgrowth and invasives in the WaterShed area. No Roundup (which has been adjudicated as a cancer causing product should be used in the WaterShed

Mahi Pono has continually disced the field below Pukalani by the Kula Hiway. I can count over 2 dozen days when their tractors have been creating dust using cultivators. They do a lot of the work at night so the citizens don't see the dust they are creating. They claim they are getting rid of the remnants of the sugar cane plants. As a farmer, I can state with 100% certainty that they are not using good agriculture practices. Furthermore, the dust will lead to runoff during rainy season (now) and when no rain, the dust gets on the trades and blankets the Ma'alaea Reef.

3.7 Under the Proposed Action, there will be a beneficial impact on soils in Central Maui as they are improved through the removal of volunteer (i.e., rogue) sugarcane and weeds, and related soil preparations for diversified agriculture. These preparations include the application of effective micronutrients, plastic removal, pH adjustments, and the application of organic matter.

This statement in the EIS is false. If they are to do what they state, then at this point in time they do not need the amount of water they are requesting. They need to prove they will do what they say. There needs to be enforcement and oversight in the final decision.

3.15

This statement: Under all alternatives, crops will be grown, but the extent to which the crops will supply local vendors and restaurants, as desired by Central Maui residents, and increase food self-sufficiency will depend upon the amount of water that can be diverted from the License Area.

is false. As a local farmer, I know that sales to local restaurants and vendors is dependent on the cost of produce. Currently, most restaurants have their ingredients shipped to Maui at a price lower than what farmers can produce. Getting the water effects growing food, but not supplying vendors.

Maui has very low unemployment. Where will Mahi Pono get it's work force? This is a critical question relative to MahiPono fulfilling their promises.

Where will 700 workers be housed? What happens to established farms when MahiPono hires away their skilled workers?

With the discussion on the County expanded Kula Ag Park, it only talks about phase 1 which is the purchase of the 262 acres. The EIS does not know about phase 2 which is to purchase 3 other lots around the initial lot purchase. In the end, the County is attempting to purchase around 870 acres and not just the 262. The largest lot that will be purchased will have the reservoir 40 on it. This reservoir will be the source for the expanded Kula Ag Park land and will still be used to provide water for the current KAP. There is no discussion on the water needs for this KAP expansion lots.

Dalton Beuprez

From: William Greenleaf <bgreenleaf.maui@yahoo.com>
Sent: Monday, November 4, 2019 12:44 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: Draft EIS

Areas of concern not addressed in Draft EIS...

- The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.
- The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.
- The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.
- The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.
- The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.
- The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.
- The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.
- The fish that appear near the mouth of streams are important for feeding substance living practitioners. They have comeback when water flows and they are gone when water does not flow. That's called a direct relationship

Water is a public trust. The streams and the life in and near the streams that is dependent on the Mauka to Maka'i flow is protected in

the Hawaii State Constitution. That protection recognizes cultural practices and cultural practitioners rights to the life created in and around streams.

Mahi Pono has plenty of water and sharing is part of the culture. If they NEED more, they can ask.

First they should ask; What do the people need? From that question, discussions will have a heart. At this point in time, it's take, take and more take, just as it has been for over 100 years.



WILSON OKAMOTO
CORPORATION
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10238-04

September 3, 2021

Mr. William Greenleaf

Bgreenleaf.maui@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Greenleaf:

Thank you for comments dated November 3, 2019 and November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

11/3/2019

Comment 1: *The 2700 page EIS is filled with FEAR MONGERING...below are some questions I have regarding chapter 3...I am a farmer and know much of what they way about agriculture is inaccurate*

Response 1: We respectfully disagree with your comments that the EIS is ‘fear mongering’. Rather the EIS is an environmental disclosure document which assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 2: *3.16 in the EIS discusses in the no water alternative that Mahi Pono estimates the cost of wells to supply Upcountry users of 7.95MGD at \$1.2B.*

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This is an example of the scare tactics that permeate this document. This is a completely false supposition. Currently the County system above 3000' would still function via the Wailoa Ditch with two lines reaching Upcountry... Upper line goes to Ulupalakua and Lower line goes to Hawaii Homelands.

Response 2: The County of Maui water service rates vary by class of users (i.e., residential, commercial, agricultural, etc.), but average approximately \$4 per kgal. Inasmuch as the same water rates are charged across the nine (9) water systems in the County of Maui, there are many factors that determine the water service rate. Due to the fact that water rates are not dependent on the service area a customer is located in, increases associated with increased water delivery costs from the EMI Aqueduct System and from new water source development for Upcountry Maui would affect MDWS ratepayers countywide, including the Upcountry farmers. Moreover, discussed in Section 4.7.3 of the Draft EIS an analysis conducted by Brown and Caldwell determined that the lifecycle cost of developing new water sources for Upcountry Maui customers would be \$34 per kgal, which far exceeds the current average water service rate of \$4 per kgal. Specifically, Section 4.7.3 of the Draft EIS, it is stated:

Under the Brown and Caldwell analysis, the life-cycle unit cost of developing and operating wells is \$34 per kgal. It is noted that the life-cycle unit cost to develop new water for Upcountry Maui customers is high. In comparison, a similar analysis conducted for the Central Maui Water System showed a unit cost of less than \$10 per kgal, or less than one third the cost of Upcountry Maui water development (Brown and Caldwell, 2014). The total life-cycle cost for 7.95 mgd of new wells is \$1.2 billion. The life-cycle cost is expressed as the net present value of all the costs incurred over 25 years, including capital, operating, and maintenance costs.

Please note that under the No Action alternative, all water agreements between EMI and the MDWS would terminate. Please note that the Wailoa Ditch is an extension of the EMI Aqueduct System which serves the MDWS directly through the Kamole-Weir Water Treatment Plant.

Comment 3: *What research provided the \$1.2B estimate for drilling wells?*

Response 3: Please note that this research is based on work conducted by Brown and Caldwell in 2014 in a letter titled, “*Petition to Amend Interim Instream Flow Standards for Waikamoi, Puohokamoa, Haipuaena, Punalau/Kolea, Honomanu, West Wailuaiki, East Wailuaiki, Kopiliula, Puakaa, Waiohue, Paakea, Kapaula & Hanawi Streams, Case No. CCH-MA13-01, Letter to Mr. Caleb P. Row, Deputy Corporation Counsel.*”

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Comment 4: *In Appendix I Mahi Pono describes E Maui as having 35 acres of truck farms and 44 acres of potential Kalo production areas. Hawaiian's have had over 100 years of depleted water resources which has impacted cultural agriculture practices. To publish these numbers as an implied potential reveals that this EIS is not intending to stand on facts, rather to act as a threat to the community.*

Response 4: Specifically, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Comment 5: *I did not see anything in the EIS preventing Mahi Pono from providing water to Hotels and Shopping Centers by the Airport.*

Response 5: Please note that the EIS is being prepared in support of a Water Lease application that would allow for water to be diverted from East Maui for uses described in the EIS, which includes only agricultural activities in Central Maui. If Mahi Pono wanted to develop other land uses, it is assumed that the Water Lease would terminate and need to be reapplied for.

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Comment 6: *Section 3.4.11 In light of MP intention to pursue diversified ag would lead to improved stewardship of EMI Ongoing maintenance and operation of EMI is expected to take place under all alternatives, **to the extent operations and maintenance of the system is financially feasible.** Another veiled threat by Mahi Pono in this EIS. Maintenance of the WaterShed has been severely neglected under the management of A&B. This EIS needs to describe the resources MahiPono intends to utilize to clean up the overgrowth and invasives in the WaterShed area. No Roundup (which has been adjudicated as a cancer causing product should be used in the WaterShed*

Response 6: You appear to misunderstand the statement in Section 3.4.11 of the Draft EIS. Please note that maintenance and repair activities of the EMI Aqueduct System are anticipated to occur under the Proposed Action and all other alternatives. However, under the Reduced Water Volume alternative and the No Action alternative, it may be no longer financially feasible to operate and maintain the EMI Aqueduct System, therefore, maintenance and repair activities would cease.

With regards to watershed management, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the Final EIS.

Regarding your comment about pesticide use, as discussed in Section 4.12 pesticide use is regulated by both State and Federal law. The use of these chemicals is compliant with all laws regulating pesticide use, and certified commercial applicators are utilized as required. Act 45 which was passed by the 2018 Hawai'i Legislature and effective on January 1, 2019 required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. This report as well as any other report required by law is publicly available from the respective government entity. The State of Hawai'i DOA's Pesticide Branch

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also provides regulatory oversight over EMI's pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. It is also noted that since January 2020 EMI committed to discontinuing use of Round-Up. This information has been included in the Final EIS as shown on pages 4-317 for East Maui relating to EMI operations and 4-318 for Central Maui relating to Mahi Pono operations.

Comment 7: *Mahi Pono has continually disced the field below Pukalani by the Kula Hiway. I can count over 2 dozen days when their tractors have been creating dust using cultivators. They do a lot of the work at night so the citizens don't see the dust they are creating. They claim they are getting rid of the remnants of the sugar cane plants. As a farmer, I can state with 100% certainty that they are not using good agriculture practices. Furthermore, the dust will lead to runoff during rainy season (now) and when no rain, the dust gets on the trades and blankets the Ma'alaea Reef.*

Response 7: We are unclear to what you are specifically referring to however, the Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff associated with their current farming activities. As Mahi Pono incrementally increases the amount of farmed acreage over time and crops are planted (particularly the permanent orchard crops), ground disturbance will again be limited, as appropriate and consistent with farming BMPs. Moreover, it should be noted that Mahi Pono only prepares fields when they are ready to be cultivated.

Comment 8: *3.7 Under the Proposed Action, there will be a beneficial impact on soils in Central Maui as they are improved through the removal of volunteer (i.e., rogue) sugarcane and weeds, and related soil preparations for diversified agriculture. These preparations include the application of effective micronutrients, plastic removal, pH adjustments, and the application of organic matter.*

This statement in the EIS is false. If they are to do what they state, then at this point in time they do not need the amount of water they are requesting. They need to prove they will do what they say. There needs to be enforcement and oversight in the final decision.

Response 8: Your comments are unclear as it is generally known that soil preparation for diversified agriculture has beneficial impacts when compared to monocrop operations such as sugarcane or left unimproved. With regards to water demands, under the Proposed Action, as discussed in Response #111 above, there are approximately 9,100 acres planned to be unirrigated with the current Mahi Pono farm plan, even with the full allocation of the water. As discussed in Response #45 above, Mahi Pono intends to plant additional crops in areas that are currently

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planned to be unirrigated pasture due to the lack of enough water to irrigate all 30,000 acres of land should water demands of the planned crops reduce.

Comment 9: *3.15 This statement: Under all alternatives, crops will be grown, but the extent to which the crops will supply local vendors and restaurants, as desired by Central Maui residents, and increase food self- sufficiency will depend upon the amount of water that can be diverted from the License Area.is false. As a local farmer, I know that sales to local restaurants and vendors is dependent on the cost of produce. Currently, most restaurants have their ingredients shipped to Maui at a price lower than what farmers can produce. Getting the water effects growing food, but not supplying vendors.*

Response 9: The Mahi Pono farm plan includes crops that are judged to be economically feasible to grow in Central Maui. To be successful, crops grown for the Hawai‘i market must be priced so that they are competitive with imports while allowing for profitable operations. The quantities produced will depend upon many factors, including how much water is available to irrigate crops.

Comment 10: *Maui has very low unemployment. Where will Mahi Pono get it’s work force? This is a critical question relative to MahiPono fulfilling their promises. Where will 700 wokers be housed? What happens to established farms when MahiPono hires away their skilled workers?*

Response 10: At full operations of the Mahi Pono farm plan, currently estimated to occur around 2030, an estimated 790 farming and crop-processing jobs will be provided in Central Maui (direct jobs) (about 160 more jobs than provided by HC&S sugar operations in 2006). As explained in Section 4.7.4:

The increase in employment would be gradual, with most jobs filled by former sugarcane workers, skilled workers from Maui and other islands, recent graduates of agricultural-schools and colleges, and unskilled workers who would receive on-the-job training.

Approximately an additional 227 indirect jobs on Maui will be generated by the purchase of goods and services, for a total exceeding 1,000 new jobs on Maui. Hiring workers will be spread out over a number of years as fields are planted, orchards mature, processing facilities are built, etc. Assuming 10 years to reach full operations, direct employment on Maui will increase by an average of about 80 jobs per year, while total direct and indirect jobs will increase by an average of about 100 jobs per year. The latter figure is less than 8% of the 1,270 annual job increase projected for the years 2020 to 2030 by the State for the County of Maui (DBEDT, “Population and Economic Projections for the State of Hawai‘i to 2045, June 2018).

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In its first 18 months of existence Mahi Pono had hired over 200 workers, all of whom were living on Maui when hired. They were attracted by the type of work, wages and benefits.

Based on past hiring, nearly all future employees are expected to come from Maui. Also, at least in the near-term, attracting workers should be easier than in the recent past because of the long-term adverse economic effects of COVID-19 on tourism and Maui's economy. It may take years to rebuild the economy, and the Mahi Pono farm plan will contribute significantly to this rebuilding.

Since most, if not all, farm workers are expected to come from Maui, few homes will be required for workers new to the island. In any case, Mahi Pono will pay wages and provide benefits sufficient to attract and retain workers.

Comment 11: *With the discussion on the County expanded Kula Ag Park, it only talks about phase 1 which is the purchase of the 262 acres. The EIS does not know about phase 2 which is to purchase 3 other lots around the initial lot purchase. In the end, the County is attempting to purchase around 870 acres and not just the 262. The largest lot that will be purchased will have the reservoir 40 on it. This reservoir will be the source for the expanded Kula Ag Park land and will still be used to provide water for the current KAP. There is no discussion on the water needs for this KAP expansion lots.*

Response 11: The proposed Phase 2 of the Kula Agricultural Park expansion is addressed in Appendix I. Specifically, it states in Subsection 8.b: the PEP Report, Subsection 8.b, p. 37:

In addition, the County plans to expand Kula Ag Park by an additional 610 acres. However, it is assumed that this second expansion will not occur because of (1) insufficient water, and (2) better agronomic conditions in Central Maui, including cheaper rents and cheaper water."

Your reference to 870 acres appears to be the total of the purchased 262 acres and the additional proposed 610 acres, rather than the amount of additional acreage propose to be purchased by the County.

11/4/2019

Comment 12: *Areas of concern not addressed in Draft EIS...*

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The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

Response 12: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI’s West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko‘olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

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The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 13: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 13: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section

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4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 14: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 14: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream

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habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are “flashy” where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that “government owned waters” from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 15: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 15: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content

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requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Comment 16: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 16: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years

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will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 17: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 17: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

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Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown in page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 18: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 18: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-61.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders

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and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Mauistreams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Comment 19: *The fish that appear near the mouth of streams are important for feeding substance living practitioners. They have comeback when water flows and they are gone when water does not flow. That's called a direct relationship*

Response 19: We acknowledge your comments. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

*Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; *Neritina graposa*), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulumui Tributaries), Honomanū, Nua'ailua, Pi'ina'au,*

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Waiokamilo, Wailuānui (Waikani Waterfall), Kopili‘ula, Pa‘akea, Kapā‘ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua‘aka‘a Tributary, and Waia‘aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo‘i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili‘ula, Pua‘aka‘a, Pa‘akea, Waia‘aka, Kapā‘ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared

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for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Moreover, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

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However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have esturine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in shown on pages 4-78 to 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR

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Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in shown on pages 4-78 to 4-83 of the Final EIS.

Comment 20: *Water is a public trust. The streams and the life in and near the streams that is dependent on the Mauka to Maka'i flow is protected in the Hawaii State Constitution. That protection recognizes cultural practices and cultural practitioners rights to the life created in and around streams. Mahi Pono has plenty of water and sharing is part of the culture. If they NEED more, they can ask.*

Response 20: Under the Public Trust Doctrine, BLNR will have to balance competing considerations before making a decision on the Water Lease. The balancing that BLNR is required to perform under the Public Trust Doctrine was described at length by the Hawai'i Supreme Court in *In Re Water Use Permit Applications*, 94 Hawai'i 97, 9 P. 3d 409 (2000) ("Waiahole I") and summarized in Section 1.5 of the Final EIS as shown on the included pages 1-25 to 1-27.

With regard to the potential effects of the Proposed Action on traditional and customary practices, as discussed in the *Ka Pa'akai* decision, we acknowledge that BLNR will be required to "to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *Ka Pa'akai*, 94 Hawai'i at 35, 7 P. 3d at 1072. BLNR has previously so stated in its Findings of Fact, Conclusions of Law, and Decision and Order filed on March 23, 2007 in the contested case proceeding that is still pending regarding the Proposed Action (the 2007 D&O) as follows:

Public trust principles require that adequate provision be made for the protection of *traditional and customary Hawaiian rights*, the protection and procreation of

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fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture and navigation.

2007 D&O COL No. 6 at page 41 (citing *Waiahole I*). CWRM, in its June 20, 2018 D&O, also recited the State's constitutional obligation to consider the impacts of stream diversions in East Maui on traditional and customary practices of Native Hawaiians at pages 242 through 245, including the Supreme Court of Hawaii's more recent holding on this subject in *State v. Pratt*, 127 Hawai'i 206, 277 P. 3d 300 (2012).

We believe that the Draft EIS (including Appendix F) together with the CWRM D&O, provide ample information for the BLNR to consider regarding potential impacts to traditional and customary practices, and that will enable BLNR, at the point that it is deliberating on the Water Lease, to fulfill its constitutional obligation "to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *Ka Pa 'akai* at, 94 Hawai'i at 35, 7 P. 3d at 1072.

Comment 21: *First they should ask; What do the people need? From that question, discussions will have a heart. At this point in time, it's take, take and more take, just as it has been for over 100 years.*

Response 21: We acknowledge your comments. The socio-economic impacts of the Proposed Action are addressed at length in Section 4.7 of the Draft EIS, and in further detail in Appendices G through I (Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report). Draft EIS Section 4.7 has subsections addressing impacts to populations and impacts (Section 4.7.1), impacts to social characteristics (Section 4.7.2), impacts to the economy and other fiscal considerations (4.7.3), and impacts to the agricultural economy. (4.7.4). The potential socio-economic impacts of the alternatives to the Proposed Action considered by the Draft EIS are analyzed in Section 3.4.11 (Social Characteristics), 3.4.12 (Economic and Fiscal Resources), and 3.4.13 (Agricultural and Related Economic Resources). The Draft EIS thoroughly addressed cumulative socio-economic impacts in Section 4.17. That discussion has been further supplemented by updates in the Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report as shown on pages 4-331 to 4-336.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: yarrowmw@aol.com
Sent: Thursday, November 7, 2019 8:46 PM
To: ian.c.hirokawa@hawaii.gov; Public Comment
Subject: DEIS questions

Subject: Follow up questions regarding East Maui Water Lease Draft-EIS Proposed Water Lease for the Nahiku, Ke'anae, Honomano, + Huelo License Areas

From: Yarrow Walsh

To: Mr. Earl Matsukawa AICP, waterleaseeis@wilsonokamoto.com (808) 946-2277,
1907 S. Beretania Street, Suite 400, Honolulu, HI 96826

To: Mr. Ian Hirokawa, ian.c.hirokawa@hawaii.gov
And Suzanne Case, Chairperson, Hawai'i DLNR
151 Punchbowl Street, Honolulu, Hawai'i 96813

Makawao **Hawaii November 7, 2019**

Thank you for allowing public comment on this Draft EIS. I am responding as a long-time Maui resident. I am very concerned about some aspects that have not been fully thought out in the EIS.

1. It does not appear that the DEIS has explained how they intend to manage the central valley and the impact of the dust on the reefs.
2. I found the DEIS inadequate in explaining how they intend to prevent a large rainfall from taking all of the bare ground into the ocean and destroying the reefs.
3. The DEIS has not explained how the public trust of water is being protected by giving a private company a lease for 30 years.
4. I am concerned the DEIS is not taking into consideration the right of the Hawaiian people to receive remuneration for the sale or lease of the water from state lands.
5. I found the treatment of the effect that this lease would have on Hawaiian cultural practices sorely lacking.

Mahalo,
Yarrow Walsh



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Yarrow Walsh
yarrowmw@aol.com

Subject Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Yarrow Walsh:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Thank you for allowing public comment on this Draft EIS. I am responding as a long-time Maui resident. I am very concerned about some aspects that have not been fully thought out in the EIS.*

Response 1: We acknowledge your comments and understand that you are a Maui resident.

Comment 2: *It does not appear that the DEIS has explained how they intend to manage the central valley and the impact of the dust on the reefs.*

Response 2: Please note that the Mahi Pono farm team follows Best Management Practices (BMPs) approved by the Hawai‘i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff associated with their current farming activities. As Mahi Pono incrementally increases the amount of farmed acreage over time and crops are planted (particularly the permanent orchard crops), ground disturbance will again be limited, as appropriate and consistent with farming BMPs. Hence, coastal waters near the Central Maui agricultural fields will not be impacted for dust and runoff.

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Comment 3: *I found the DEIS inadequate in explaining how they intend to prevent a large rainfall from taking all of the bare ground into the ocean and destroying the reefs.*

Response 3: As noted in Response #2 above, the Mahi Pono farm team follows BMPs approved by the Hawai'i Department of Health (DOH), the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and other governmental agencies in regards to the use of chemicals, and controlling dust and erosion and, thus, runoff associated with their current farming activities. As Mahi Pono incrementally increases the amount of farmed acreage over time and crops are planted (particularly the permanent orchard crops), ground disturbance will again be limited, as appropriate and consistent with farming BMPs. Hence, coastal waters near the Central Maui agricultural fields will not be impacted for dust and runoff.

Moreover, Central Maui as noted in Section 4.3.1 of the Draft EIS:

Central Maui's climate is typical of Leeward coastal lowlands receiving little rainfall annually, and is relatively dry. The northeast areas receive more rain than the central and southern areas of Central Maui. The average annual rainfall ranges from less than 10 inches in the southern part of the isthmus to over 40 inches in the northeastern areas.

Hence, it is not very common for a large rain event that would move large amounts of earth into the ocean to occur within the Central Maui region.

Comment 4: *The DEIS has not explained how the public trust of water is being protected by giving a private company a lease for 30 years.*

Response 4: Regarding your comment about the mandated protection of the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

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Comment 5: *I am concerned the DEIS is not taking into consideration the right of the Hawaiian people to receive remuneration for the sale or lease of the water from state lands.*

Response 5: Your comment about the right of the Hawaiian people to receive remuneration for sale or lease of water is unclear. However, the rental payments due under the Water Lease will be distributed into the State Special Land Development Fund (as is done for payments due on all the other leases and revocable permits in the State). The Office of Hawaiian Affairs (OHA) receives 20% of the revenue generated from each lease while the Department of Hawaiian Home Lands (DHHL) receives 30% of the revenue generated, as discussed in Section 4.7.3 of the EIS. However, please note that the State of Hawai‘i Department of Land and Natural Resources (DLNR) administers the Fund, i.e., decides how to use the revenue generated.

Comment 6: *I found the treatment of the effect that this lease would have on Hawaiian cultural practices sorely lacking.*

Response 6: We respectfully disagree with your comment. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to ‘ōpae, ‘o‘opu, pūpūlo‘i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Honopou (Puniawa Tributary), Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili‘ula, Pa‘akea, Kapā‘ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua‘aka‘a Tributary, and Waia‘aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo‘i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject

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to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for

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reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC’s website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Sincerely,

Keola Cheng

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: Zack Williams <zackwilliamsmaui@gmail.com>
Sent: Thursday, November 7, 2019 8:46 AM
To: ian.c.hirokawa@hawaii.gov; Public Comment; oeqchawaii@doh.hawaii.gov
Subject: Comments on draft eis for east maui water

Aloha mai kākou. My name is Zack Williams and I live in the ahupua'a of Ko'olau in the valley of lower Nāhiku on an ancient 'āina named 'ihi'ihinui in the bay of Honolulu. Our 'āina is located between Makapipi stream and Hanawī streams and our lo'i kalo depends on surface and spring water from both kahawai to support our farming efforts. One major issue I had with the draft EIS, is it says there is no chance of biological or habitat restoration for Hanawī, Kapā'ula, Pa'akea and Waia'aka. These four streams hold more of our endemic resources such as hapa wai, hīhīwai, 'o'opu (numerous species that are endangered), moi, āholehole and akule that depend on that waters to breed and sustain their populations. The fact that the company doing the EIS says they surveyed 33000 acres of land in 4 days is just not possible. Ive lived in these valleys my entire life and still discover new kīpuka with flora and fauna found no where else in Hawai'i. Since the release of only some of the water to these streams in 2015 we have seen a major increase in fish populations between Nāhiku and Wailua Nui. The moi have been spawning more prolifically than any other point in my life. The same goes for the akule which have been living in the bay for almost the last two years now and have provided a major resource for substance gathering for our community in Nāhiku and Ko'olau. The hīhīwai are thriving in all the rivers i named plus in Waiohue, Kopili'ula and Wailua'iki. I don't agree with taking any more water from Pua'aka'a stream as well as that is one of the main tributaries to Kopili'ula. The fact you order one stream 94-100% restored for habitat restoration but then take 40% of the surface water from one of it's tributary streams is not only wrong, it is a question of legality. For the first time in over a century our watershed is being replenished by natural stream flow of surface waters. Let's not interrupt the progress we have made to sell off a public trust to the worst stewards in Hawai'i's history (EMI/Mahi Pono). If any more water is aloud to leave Ko'olau ahupua'a myself and all of my neighbors in Ko'olau with be adversely impacted economically, spiritually and culturally by taking away our inherent right to self sustain, gather, practice our culture and relegion. Mahalo nui loa for your time and please find it in your hearts to hear not only my voice, but the voice of the ancestors who cannot be hear physically to share their love, mana'o and 'ike for this 'āina.



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September 3, 2021

Mr. Zach Williams
zackwilliamsmaui@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Williams:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Aloha mai kākou. My name is Zack Williams and I live in the ahupua‘a of Ko‘olau in the valley of lower Nāhiku on an ancient ‘āina named ‘ihi‘ihinui in the bay of Honoluluui. Our ‘āina is located between Makapipi stream and Hanawī streams and our lo‘i kalo depends on surface and spring water from both kahawai to support our farming efforts.*

Response 1: We acknowledge your comments and understand that you are a resident in Nāhiku in between Makapipi and Hanawī Streams. Please note that both of these streams were subject to the CWRM D&O and had flow restored. Specifically, Makapipi Stream was categorized as a taro stream and was fully restored while Hanawī Stream was categorized as a connectivity stream and had partial flow restoration. With regards to taro farming, , please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-

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municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or

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nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 2: *One major issue I had with the draft EIS, is it says there is no chance of biological or habitat restoration for Hanawī, Kapā‘ula, Pa‘akea and Waia‘aka. These four streams hold more of our endemic resources such as hapa wai, hīhīwai, ‘o‘opu (numerous species that are endangered), moi, āholehole and akule that depend on that waters to breed and sustain their populations.*

Response 2: Please note that nowhere in the EIS is it stated that the above streams have no chance of habitat restoration. Rather it is stated in Section 1.3.4 of the EIS that, “*Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows... Streams that are set at connectivity flow are: Kapā‘ula, Pa‘akea, Pua‘aka‘a, Puohakamoa, Ha‘ipua‘ena, Nua‘ailua, Waia‘aka, and Hanawī.*” However, clarification has been added to this statement as shown on page 1-15 that these streams were restored flow to allow for some movement of biota, these streams should allow for a minimum connectivity flow across diversion structures to allow for passage of biota upstream. This is a positive for biological improvement. These spring-fed streams have had consistent baseflow downstream of the diversion as a result of the spring inputs. Hanawī Stream is noted for its large springs (Big Spring and Hanawī Spring) and Kapā‘ula Stream has Pali Spring adding consistent baseflow to the stream below the Koolau Ditch Diversions. As a result of the additional baseflow, the streams supported high numbers of native stream animals below the springs (DAR

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2009) and had higher amounts of habitat units predicted from the HSHEP modeling for most native streams animals than most East Maui streams (Appendix 3 for HSHEP Report(Appendix A)). The connectivity flows are intended to consistently connect the lower spring-fed reaches with the upper reaches above the diversion.

Pa'akea is a small stream with a comparatively low amount of instream habitat for native stream species. Thus, additional flow restoration would have a small change on overall East Maui stream habitat. Waia'aka is classified as an intermittent stream and is unlikely to consistently contain habitat for the native amphidromous stream animals. Additional streamflow in this stream may not provide much benefit as it goes dry naturally.

Comment 3: *The fact that the company doing the EIS says they surveyed 33000 acres of land in 4 days is just not possible. Ive lived in these valleys my entire life and still discover new kīpuka with flora and fauna found no where else in Hawai'i.*

Response 3: Regarding your comment about the length of time to conduct physical surveys related to the flora and fauna resources, ground and aerial surveys were conducted in 2017 and 2018 by SWCA to field-verify vegetation types and species found during previous surveying and mapping efforts. It was determined that the HIGAP vegetation data layer produced by Gon et al. (2006) was highly representative of the vegetation found in the "Study Area." Please note that the SWCA report, provided as EIS Appendix C, defined the "Study Area" as the collective License Area and the 30,000 acres of agricultural land that it referred to as the "Service Area." The HIGAP mapping data was used to estimate species distributions and potential impacts for the entire 33,000-acre License Area. Threatened and endangered species were categorized by each species' potential to occur in each vegetation type based on habitat needs. Methods have been further clarified in Appendix C, as summarized in Section 4.4 of the Final EIS as shown on page 4-113.

Comment 4: *Since the release of only some of the water to these streams in 2015 we have seen a major increase in fish populations between Nāhiku and Wailua Nui. The moi have been spawning more prolifically than any other point in my life. The same goes for the akule which have been living in the bay for almost the last two years now and have provided a major resource for substance gathering for our community in Nāhiku and Ko'olau. The hīhīwai are thriving in all the rivers i named plus in Waiohue, Kopili'ula and Wailua'iki.*

Response 4: We acknowledge your comments. Please note that many people at the EISPN public scoping meetings on February 22nd and 23rd, 2017 testified noting positive impacts seen from increased stream flow resulting from the cessation of sugar operations, please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section

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4.6 of the Final EIS. See page 4-168 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. This is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSHEP model estimated that approximately 79.8% of total HU would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected under the No Action alternative as noted above in Response #17.

Comment 5: *I don't agree with taking any more water from Pua'aka'a stream as well as that is one of the main tributaries to Kopili'ula. The fact you order one stream 94-100% restored for habitat restoration but then take 40% of the surface water from one of it's tributary streams is not only wrong, it is a question of legality.*

Response 5: We acknowledge your comments. However, please note that the CWRM was charged with setting the IIFS for the various streams and tributaries that were subject to it in the License Area as discussed in Section 1.3.4 of the Draft EIS.

Comment 6: *For the first time in over a century our watershed is being replenished by natural stream flow of surface waters. Let's not interrupt the progress we have made to sell off a public trust to the worst stewards in Hawai'i's history (EMI/Mahi Pono).*

Response 6: We acknowledge your comments. Regarding your comment about the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

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Comment 7: *If any more water is aloud to leave Ko‘olau ahupua‘a myself and all of my neighbors in Ko‘olau with be adversely impacted economically, spiritually and culturally by taking away our inherent right to self sustain, gather, practice our culture and relegion.*

Response 7: Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to ‘ōpae, ‘o‘opu, pūpūlo‘i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Honopou (Puniawa Tributary), Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili‘ula, Pa‘akea, Kapā‘ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua‘aka‘a Tributary, and Waia‘aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo‘i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe‘e, Puohokamoa, Ha‘ipua‘ena, Punala‘u (Kōlea and Ulunui Tributaries), Honomanū, Nua‘ailua, Pi‘ina‘au, Palauhulu (Hauoli Wahine and Kano Tributaries), ‘Ōhi‘a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili‘ula, Pua‘aka‘a, Pa‘akea, Waia‘aka, Kapā‘ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates

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that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, on pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the

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existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Comment 8: *Mahalo nui loa for your time and please find it in your hearts to hear not only my voice, but the voice of the ancestors who cannot be hear physically to share their love, mana ‘o and ‘ike for this ‘āina.*

Response 8: Thank you for participating in this EIS process.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC’s website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: asteinerny@everyactioncustom.com on behalf of [A.L.Steiner](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 11:55:30 AM

Dear Mr. Matsukawa,

Please accept my comments in full OPPOSITION to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams MUST NOT be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities. Additionally, the DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. Overall, the DEIS does NOT sufficiently analyze the threat and damage the diversions have caused to our communities, as well as native aquatic species.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
A.L. Steiner
1222 Atwood St Los Angeles, CA 90063-2604
asteinerny@gmail.com



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A.L. Steiner
1222 Atwood St
Los Angeles, CA 90063-2604
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Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear A.L. Steiner:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI’s West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko‘olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume” alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft

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EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that

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could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to our communities, as well as native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different

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flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: alisonsimmons@everyactioncustom.com on behalf of [Alison Simmons](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 9:31:46 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

I have personally seen the decline in the coral reefs around Kahekili!

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Alison Simmons
711 Upper Ulumalu Rd Haiku, HI 96708-5210
alisonsimmons@gmail.com



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September 3, 2021

Alison Simmons
711 Upper Ulumalu Rd
Haiku, HI 96708-5210
alisonsimmons@everyactioncustom.com
alisonsimmons@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Simmons:

Thank you for comments dated October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: feldspar@everyactioncustom.com on behalf of [Allan Chen](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 4:04:30 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Allan Chen
111 Shepardson Ln Alameda, CA 94502-6575
feldspar@well.com



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September 3, 2021

Allan Chen
111 Shepardson Ln
Alameda, CA 94502-6575
feldspar@everyactioncustom.com
feldspar@well.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Chen:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: aaalberts@everyactioncustom.com on behalf of [Allison Alberts](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 7:27:59 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Allison Alberts
129 Milan Way Green Lane, PA 18054
aaalberts@hotmail.com



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September 3, 2021

Allison Alberts
129 Milan Way
Green Lane, PA 18054
aaalberts@everyactioncustom.com
aaalberts@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Allison Alberts:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Allison Alberts

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: gordonsgoods407@everyactioncustom.com on behalf of [Amanda Gordon](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 1:54:12 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Amanda Gordon
828 Lighthouse Cv Sanford, FL 32773-6445
gordonsgoods407@gmail.com



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September 3, 2021

Amanda Gordon
828 Lighthouse Cv
Sanford, FL 32773-6445
Gordonsgoods407@everyactioncustom.com
Gordonsgoods407@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Gordon:

Thank you for comments dated November 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: amandaniles18@everyactioncustom.com on behalf of [Amanda Niles](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 10:02:00 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Amanda Niles
PO Box 7995 Kalispell, MT 59904-0995
amandaniles18@gmail.com

From: amandaniles18@everyactioncustom.com on behalf of [Amanda Niles](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 11:20:03 AM

Dear Mr. Matsukawa,

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Sincerely,
Amanda Niles
PO Box 7995 Kalispell, MT 59904-0995
amandaniles18@gmail.com



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September 3, 2021

Amanda Niles
P.O Box 7995
Kalispell, MT 59904-0995
Amandaniles18@everyactioncustom.com
Amandaniles18@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Keʻanae, Honomanū and Huelo License Areas

Dear Ms. Niles:

Thank you for comments dated October 3, 2019 and November 4th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawaiʻi Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: addiesmock@everyactioncustom.com on behalf of [Amanda Smock](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 8:27:43 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Amanda Smock
469 Eastern Pkwy Apt N Brooklyn, NY 11216-4451
addiesmock@yahoo.com



10238-04
September 3, 2021

Amanda Smock
469 Eastern Park Way Apt N
Brooklyn, NY 11216-4451
addiesmock@everyactioncustom.com
addiesmock@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Smock:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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From: kou_puuwai@everyactioncustom.com on behalf of [Amber H](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 9:47:57 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Amber H
Campbell, CA 95008
kou_puuwai@hotmail.com

From: kou_puuwai@everyactioncustom.com on behalf of [Amber H](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 7:33:30 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. I am incredibly disappointed in the choices that were made here. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Amber H
3200 Wawae Rd Kalaheo, HI 96741-9303
kou_puuwai@hotmail.com



10238-04
September 3, 2021

Ms. Amber H.
3200 Wawae Road
Kalaheo, HI 96741-9303
kou_puuwai@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Amber H.:

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Response 2: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish

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and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: amyharlib@everyactioncustom.com on behalf of [Amy Harlib](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 6:38:18 PM

Dear Mr. Matsukawa,

DON'T LET BIG CORPORATE GREED FURTHER DESTROY THE ECOSYSTEM.

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Amy Harlib
212 W 22nd St # ST New York, NY 10011-2706
amyharlib@e-activism.com

From: amyharlib@everyactioncustom.com on behalf of [Amy Harlib](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 10:22:29 PM

Dear Mr. Matsukawa,

SAVE MAUI'S STREAMS!

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

I totally agree with these statements for Sierra Club, Hawaii:

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Amy Harlib
212 W 22nd St New York, NY 10011-2706
amyharlib@e-activism.com



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September 3, 2021

Ms. Amy Harlib
212 W. 22nd Street
New York, NY 10011-2706
amyharlib@e-activism.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Keʻanae, Honomanū and Huelo License Areas

Dear Ms. Harlib:

Thank you for comments dated October 2, 2019 and November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawaiʻi Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *DON'T LET BIG CORPORATE GREED FURTHER DESTROY THE ECOSYSTEM. Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct

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System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via

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EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nāhiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on

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the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

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When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

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Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

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Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the

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Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the

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continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Comment 9: *SAVE MAUI'S STREAMS! Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 9: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty

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percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 10: *I totally agree with these statements for Sierra Club, Hawaii: The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 10: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI

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Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80, enclosed. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 11: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 11: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate

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stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-61 to 4-67.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 12: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 12: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

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Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 13: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

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Response 13: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Comment 14: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 14: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and

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Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 15: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 15: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the

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License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 16: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 16: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-61.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it

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is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: pickeria@everyactioncustom.com on behalf of [Amy Pick](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 2:46:59 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Amy Pick
1 Hawk Dr New Paltz, NY 12561-2447
pickeria@newpaltz.edu



10238-04
September 3, 2021

Amy Pick
1 Hawk Dr
New Paltz, NY 12561-2447
pickeria@everyactioncustom.com
pickeria@newpaltz.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Amy Pick:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration,

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potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: hammerheadamy@everyactioncustom.com on behalf of [Amy Stephens](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, November 7, 2019 1:04:50 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Amy Stephens
Lahaina, HI 96761
hammerheadamy@hotmail.com



10238-04
September 3, 2021

Amy Stephens
Lahaina, HI 96761
hammerheadamy@everyactioncustom.com
hammerheadamy@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Amy Stephens:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration,

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potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program

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(formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: amywalton@everyactioncustom.com on behalf of [Amy Walton](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 8, 2019 3:56:29 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Amy Walton
Hanamaulu, HI 96713
amywalton@wildblue.net



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Ms. Amy Walton
amwalton@wildblue.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Walton:

Thank you for comments dated November 8, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

1. *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response: The objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nahiku. DEIS 1-1. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject

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to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 23,000 acres of the applicable Central Maui fields.

The CWRM's D&O ordered significant return of flows to East Maui streams. CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law [COL] 138).

Some of the petitioned streams have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ₅₀), which generally represents the flow necessary to restore 90% of the habitat in a stream (H₉₀), based on the biological diversity and habitat that already exists. These streams were ordered to be restored to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian rights (CWRM D&O, COL 131). These streams are: Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopili'ula, and Waiohue. (CWRM D&O, COL 132)

CWRM also found that there were other petitioned streams for which restoration of flow would not result in significant biological or ecological gains and that the water may be better used for noninstream purposes. For these streams, a connectivity flow to allow for movement of instream biota would be sufficient (CWRM D&O, COL 129). This minimum connectivity flow was determined to be twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, Waia'aka, and Hanawī. (CWRM D&O, COL 146). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

CWRM acknowledged that in the context of a proceeding to set the IIFS, it does not have the authority to determine how much water may be used for noninstream use by any particular party. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, which lease would be subject to the IIFS set by CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream uses. (CWRM D&O, COL 150)

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CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. (CWRM D&O, COL 151). The CWRM recognized that the stream water that may be leased/licensed by the BLNR from the petitioned East Maui streams may not be sufficient to satisfy the full implementation of a diversified agricultural plan for Central Maui. However, CWRM expected that a sufficient amount of noninstream water would be available to provide the initial phase of allowing lands already designated as IAL under HRS Chapter 205 in Central Maui to be developed for diversified agriculture. (CWRM D&O, COL 152).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the DEIS and in Section 1.3.4 of the Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: druw.hagi10@everyactioncustom.com on behalf of [ANDREW ISODA](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 9:24:47 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
ANDREW ISODA
PO Box 13029 Lahaina, HI 96761-8029
druw.hagi10@gmail.com

From: druw.hagi10@everyactioncustom.com on behalf of [Andrew Isoda](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 9:13:12 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Andrew Isoda
Lahaina, HI 96761
druw.hagi10@gmail.com



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September 3, 2021

Andrew Isoda
P.O Box 13029
Lahaina, HI 96761-8029
druw.hagi10@everyactioncustom.com
druw.hagi10@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Andrew Isoda:

Thank you for comments dated November 1, 2019 and November 3rd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: rnadoma@everyactioncustom.com on behalf of [Angela Domagalski](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 1:30:44 PM

Dear Mr. Matsukawa,

I vote and Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Angela Domagalski
24 Huina Pl Kula, HI 96790-8600
rnadoma@gmail.com



10238-04
September 3, 2021

Angela Domagalski
24 Hunia Pl
Kula, HI 96790-8600
rnadoma@everyactioncustom.com
rnadoma@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Angela Domagalski:

Thank you for comments dated October 19th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I vote and Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: annafriedman.af@everyactioncustom.com on behalf of [Anna Friedman](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 6:50:53 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Anna Friedman
Malibu, CA 90265
annafriedman.af@gmail.com



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September 3, 2021

Anna Friedman
Malibu, CA 90265
annafriedman.af@everyactioncustom.com
annafriedman.af@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Anna Friedman:

Thank you for comments dated November 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: alieding@everyactioncustom.com on behalf of [Anna Lieding](#)
To: [Public Comment](#)
Subject: Comments for A&B DEIS
Date: Thursday, November 7, 2019 6:56:14 AM

Dear Mr. Matsukawa,

I adamantly oppose A&Bs proposal to further divert the streams of East Maui. Water belongs to the people, it should not be held by a private entity.

Here are some important points:

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease.

These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Anna Lieding
Haiku, HI 96708
alieding@gmail.com



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September 3, 2021

Anna Lieding
Haiku, HI 96708
alieding@everyactioncustom.com
alieding@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Anna Lieding:

Thank you for comments dated November 7th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I adamantly oppose A&Bs proposal to further divert the streams of East Maui. Water belongs to the people, it should not be held by a private entity.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

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Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water*

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will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not

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scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant

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requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes.

However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and

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implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules

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restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program

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(formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: onehiker4fun@everyactioncustom.com on behalf of [Anne Allison](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, November 5, 2019 8:58:03 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease.

These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

Please consider what is pono for the people, land and water.

Thank you for this opportunity to submit comments on this Draft EIS.

Anne Allison Kihei resident

Sincerely,

Anne Allison

1215 S Kihei Rd Ste Pm O Kihei, HI 96753-5225

onehiker4fun@mykolab.com



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Anne Allison
1215 S Kihei Road St
Kihei, HI 96753-5225
Onehiker4fun@everyactioncustom.com
Onehiker4fun@mykolab.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Anne Allison:

Thank you for comments dated November 15th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 2: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 2: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Comment 3: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 3: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from

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30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 4: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 4: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

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Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawī NAR. It is unlikely that the removal of the Hanawī NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: atenganbu2013@everyactioncustom.com on behalf of [Anuheia Dudoit](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 11, 2019 5:23:25 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Anuheia Dudoit
Kihei, HI 96753
atenganbu2013@gmail.com



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Anuheia Dudoit
Kihei, HI 96753
atenganbu2013@everyactioncustom.com
atenganbu2013@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Anuheia Dudoit:

Thank you for comments dated October 11, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: bkm1223@everyactioncustom.com on behalf of [Barb Morrison](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 9:28:00 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Barb Morrison
2346 Druid Rd E Clearwater, FL 33764-4102
bkm1223@hotmail.com



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September 3, 2021

Barb Morrison
2346 Druid Rd E
Clearwater, FL 33764-4102
bkm1223@everyactioncustom.com
bkm1223@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Barb Morrison:

Thank you for comments dated November 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: barbrick@everyactioncustom.com on behalf of [Barbara Nosaka](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:36:45 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Barbara Nosaka
2216 Hoonanea St Honolulu, HI 96822-2427
barbrick@hawaiiintel.net



10238-04
September 3, 2021

Barbara Nosaka
2216 Hoonanea St
Honolulu, HI 96822-2427
barbrick@everyactioncustom.com
barbrick@hawaiiantel.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Barbara Nosaka:

Thank you for comments dated November 1st, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Barbara Nosaka

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Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: b.nalanishamblin@everyactioncustom.com on behalf of [Beverly Shamblin](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 9:51:01 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Beverly Shamblin
PO Box 319 Hana, HI 96713-0319
b.nalanishamblin@yahoo.com



10238-04
September 3, 2021

Beverly Shamblin
PO Box 319
Hana, HI 96713-0319
b.nalanishamblin @everyactioncustom.com
b.nalanishamblin@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Beverly Shamblin:

Thank you for comments dated November 11th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Letter to Beverly Shamblin

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September 3, 2021

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September 3, 2021

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: skbkms@everyactioncustom.com on behalf of [Blake Wu](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 8:00:17 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Blake Wu
3600 Mt Diablo Blvd Lafayette, CA 94549-3712
skbkms@graffiti.net



10238-04
September 3, 2021

Blake Wu
3600 Mt Diablo Blvd
Lafayette, CA 94549-3712
skbkms@everyactioncustom.com
skbkms@graffiti.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Blake Wu:

Thank you for comments dated November 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: tnumata@everyactioncustom.com on behalf of [Bobbie Numata](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 16, 2019 8:24:12 PM

Dear Mr. Matsukawa,

- The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.
- The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.
- The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.
- The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.
- The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.
- The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.
- The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Sincerely,
Bobbie Numata
50 Vevau St Kahului, HI 96732-1659
tnumata@hawaii.edu



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September 3, 2021

Bobbie Numata
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Kahului, HI 96732-1659
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Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Bobbie Numata:

Thank you for comments dated October 17th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 1: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry

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Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 2: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 2: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the

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License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 3: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 3: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or

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diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 4: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 4: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the FEIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

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Comment 5: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 5: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 6: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 6: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking

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in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 7: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 7: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

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With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poeciliid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poeciliid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poeciliid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poeciliid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: uluusurf@everyactioncustom.com on behalf of [brett gobar](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 5:53:01 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
brett gobar
792065 PO Paia, HI 96779
uluusurf@gmail.com



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Brett Gobar
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uluusurf@everyactioncustom.com
uluusurf@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Brett Gobar:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration,

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potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program

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(formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: btpg2252@everyactioncustom.com on behalf of [Brian Gibbons](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 3:13:46 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Brian Gibbons
19510 Lorain Rd Fairview Park, OH 44126-1931
btpg2252@yahoo.com

From: btpg2252@everyactioncustom.com on behalf of [Brian Gibbons](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 9:11:03 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Brian Gibbons
106 Fairview Park, OH 44126
btpg2252@yahoo.com



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September 3, 2021

Brian Gibbons
#106 Fairview Park
OH 44126
btpg2252@everyactioncustom.com
btpg2252@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Brian Gibbons:

Thank you for comments dated October 3rd, 2019 and November 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: molokaimowat@everyactioncustom.com on behalf of [Bridget Mowat](#)
To: [Public Comment](#)
Subject: As witnessed in Maui, dried streams and rivers kill the life of rivers. Hawaiians thrive on 'o'opu, shrimp, hihiwai and we depend on springs along our seashore for limu and young fish production. Healthy, flowing rivers sustains communities.
Date: Thursday, November 7, 2019 12:09:23 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Bridget Mowat
800 Kamehameha V Hwy Kaunakakai, HI 96748
molokaimowat@gmail.com



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September 3, 2021

Bridget Mowat
800 Kamehameha V Hwy
Kaunakakai, HI 96748
molokaimowat@everyactioncustom.com
molokaimowat@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Bridget Mowat:

Thank you for comments dated November 7th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Bridget Mowat

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Letter to Bridget Mowat

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: brooks-obr@everyactioncustom.com on behalf of [Brooks Obr](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:17:54 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Brooks Obr
1063 Mulberry Ct Coralville, IA 52241-3355
brooks-obr@uiowa.edu



10238-04
September 3, 2021

Brooks Obr
1063 Mulberry Ct
Coralville, IA 52241-3355
brooks-obr @everyactioncustom.com
brooks-obr@uiowa.edu

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Brooks Obr:

Thank you for comments dated October 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: workcapt@everyactioncustom.com on behalf of [Bryan Stewart](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, November 7, 2019 7:50:20 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Bryan Stewart
Puunene, HI 96784
workcapt@gmail.com



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September 3, 2021

Bryan Stewart
Puunene, HI 96784
workcapt@everyactioncustom.com
workcapt@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Bryan Stewart:

Thank you for comments dated November 7th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Bryan Stewart

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September

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8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: caleb.j.merendino@everyactioncustom.com on behalf of [Caleb Laieski](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 7, 2019 8:02:47 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Caleb Laieski
109 Timberidge Dr Fredericksburg, VA 22406-4682
caleb.j.merendino@gmail.com



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September 3, 2021

Caleb Laieski
109 Timberidge Dr
Fredericksburg, VA 22406-4682
caleb.j.merendino@everyactioncustom.com
caleb.j.merendino@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Caleb Laieski:

Thank you for comments dated October 7th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Caleb Laieski

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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Letter to Caleb Laieski

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: caleb.j.merendino@everyactioncustom.com on behalf of [Caleb Merendino](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:19:52 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Caleb Merendino
2750 Monacan St Apt 104 Alexandria, VA 22314-5824
caleb.j.merendino@gmail.com



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September 3, 2021

Caleb Merendino
2750 Monacan St Apt 104
Alexandria, VA 22314-5824
caleb.j.merendino@everyactioncustom.com
caleb.j.merendino@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Caleb Merendino:

Thank you for comments dated November 1st, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Caleb Merendino

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: camillegilbert@everyactioncustom.com on behalf of [Camille Gilbert Gilbert](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:58:01 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Camille Gilbert Gilbert
1923 San Andres St Apt F Santa Barbara, CA 93101-4045
camillegilbert@aol.com



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September 3, 2021

Camille Gilbert
1923 San Andres St Apt F
Santa Barbara, CA 93101-4045
camillegilbert@everyactioncustom.com
camillegilbert@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Camille Gilbert:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Camille Gilbert

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: 4uhane@everyactioncustom.com on behalf of [Carla Hess](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 6, 2019 12:00:30 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS is woefully inadequate. It does not address the harm that stream diversion has caused, how native streamlife habitat & species are being, and will be, adversely affected by present & future diversions. There is no plan or funding to address invasive plant and animal species in the leased lands, nor to address the effects on the mosquito populations of East Maui. As we have been experiencing drought conditions here I feel that lease terms should be less than 30 years...the climate is changing, and the water supply is not guaranteed. Finally, these are public lands, and the people of Maui should have access to them without having to jump through EMI's hoops.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Carla Hess
95 Mokuahi St Makawao, HI 96768-8961
4uhane@gmail.com

From: 4uhane@everyactioncustom.com on behalf of [Carla Hess](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 20, 2019 1:19:01 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Here are the main points:

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.

It sounds as though the BLNR simply rubber-stamped Alexander & Baldwin's/Maui Pono's request, without any consideration of the consequences to the people and environment of Maui. This is profoundly wrong. Additionally, there was absolutely no justification given for increasing the amount of water allowed by 10 million gallons per day.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Carla Hess

Sincerely,
Carla Hess
95 Mokuahi St Makawao, HI 96768-8961
4uhane@gmail.com



10238-04
September 3, 2021

Carla Hess
95 Mokuahi St
Makawao, HI 96768-8961
4uhane@everyactioncustom.com
4uhane@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Carla Hess:

Thank you for comments dated October 6th 2019 and October 20th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI’s West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko‘olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions

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amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

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Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

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Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from

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30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

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Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poeciliid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poeciliid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poeciliid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poeciliid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits

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of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: carlijegardner@everyactioncustom.com on behalf of [Carli Gardner](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 12, 2019 10:23:28 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Carli Gardner
44 -106 Ikeanani Dr Apt 521 Kaneohe, HI 96744-6417
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Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Letter to Carli Gardner

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September 3, 2021

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: BrooklynboyCJ20@everyactioncustom.com on behalf of [Carlos Echevarria](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 6:56:51 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Carlos Echevarria
5301 W Goldenwood Dr Inglewood, CA 90302-1037
BrooklynboyCJ20@aol.com

From: brooklynboycj20@everyactioncustom.com on behalf of [Carlos Echevarria](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 11:56:56 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Carlos Echevarria
5301 W Goldenwood Dr Inglewood, CA 90302-1037
brooklynboycj20@aol.com



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September 3, 2021

Carlos Echevarria
5301 W Goldenwood Dr
Inglewood, CA 90302-1037
brooklynboycj20@everyactioncustom.com
brooklynboycj20@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Carlos Echevarria:

Thank you for comments dated October 2, 2019 and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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Letter to Carlos Echevarria

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: ccollins54@everyactioncustom.com on behalf of [Carol Collins](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 3:49:26 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Carol Collins
1935 Nault Rd Dover, DE 19904-5823
ccollins54@msn.com



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September 3, 2021

Carol Collins
1935 Nault Rd
Dover, DE 19904-5823
ccollins54@everyactioncustom.com
ccollins54@msn.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Carol Collins:

Thank you for comments dated October 3rd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI’s West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko‘olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

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Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

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Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

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Letter to Carol Collins

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Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the

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trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from

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the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poeciliid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poeciliid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poeciliid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poeciliid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: joanie.patterson@everyactioncustom.com on behalf of [Carol Joan Patterson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 5:21:45 PM

Dear Mr. Matsukawa,

Please accept my comments opposing Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui. The DEIS assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This is an incorrect assumption. The DEIS should consider how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. Instead they say that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. The DEIS does not sufficiently address the threat and damage the diversions have caused to native aquatic species. They have no plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands. The DEIS should look into and support shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies. Mosquito populations in East Maui threaten rare native species, as well as human populations. Stagnant pools along diverted streams have been breeding grounds.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Carol Joan Patterson
Eureka Springs, AR 72632
joanie.patterson@yahoo.com



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Carol Joan Patterson
Eureka Springs, AR 72632
joanie.patterson@everyactioncustom.com
joanie.patterson@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Carol Joan Patterson:

Thank you for comments dated November 4th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI’s West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko‘olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

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Comment 3: *The DEIS should consider how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. Instead they say that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

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Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *They have no plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The

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requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should look into and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm

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lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *Mosquito populations in East Maui threaten rare native species, as well as human populations. Stagnant pools along diverted streams have been breeding grounds.*

Response 7: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program

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Letter to Carol Joan Patterson

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(formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: cathycaper@everyactioncustom.com on behalf of [Cathy O'Leary Carey](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 5:56:07 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Cathy O'Leary Carey
17696 Cumana Ter San Diego, CA 92128-1814
cathycaper@sbcglobal.net



10238-04
September 3, 2021

Cathy O'Leary Carey
17696 Cumana Ter
San Diego, CA 92128-1814
cathycaper@everyactioncustom.com
cathycaper@sbcglobal.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Cathy O'Leary Cary:

Thank you for comments dated October 18th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Cathy O'Leary Cary

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Letter to Cathy O'Leary Cary

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: joelypop@everyactioncustom.com on behalf of [Cheryl Reeser](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 14, 2019 11:14:39 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Cheryl Reeser
51 Kealaloa Ave Apt E Makawao, HI 96768-9069
joelypop@gmail.com



10238-04
September 3, 2021

Cheryl Reeser
51 Kealaloa Ave Apt E
Makawao, HI 96768-9069
joelypop2@everyactioncustom.com
joelypop@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Cheryl Reeser:

Thank you for comments dated October 14th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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Letter to Cheryl Reeser

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: mchazy77@everyactioncustom.com on behalf of [Chris Hazynski](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, November 3, 2019 4:50:38 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Chris Hazynski
17 Gate Ct Burlington, NJ 08016-3034
mchazy77@hotmail.com



10238-04
September 3, 2021

Chris Hazynski
17 Gate Ct
Burlington, NJ 08016-3034
mchazy77@everyactioncustom.com
mchazy77@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Chris Hazynski:

Thank you for comments dated November 3rd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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Letter to Chris Hazynski

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Letter to Chris Hazynski

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September 3, 2021

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: mauimyrs1@everyactioncustom.com on behalf of [Chris Myers](#)
To: [Public Comment](#)
Subject: Why does our Maui gov not do what is just and right for the land and the people who live here and will be impacted negatively by not only continuing to give unjustified water rights but increase it as well? Impact Statement
Date: Friday, October 18, 2019 5:53:12 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Chris Myers
241 Oluea Cir Kihei, HI 96753-7365
mauimyrs1@gmail.com



10238-04
September 3, 2021

Chris Myers
241 Oluea Circle
Kihei, HI 96753-7365
mauimyers1@everyactioncustom.com
mauimyers1@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Chris Myers:

Thank you for comments dated October 18th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: racegirl1971@everyactioncustom.com on behalf of [Christi Dillon](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 6, 2019 6:24:25 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Christi Dillon
175 Forest Ridge Rd Mooresville, NC 28117-6519
racegirl1971@yahoo.com

From: racegirl1971@everyactioncustom.com on behalf of [Christi Dillon](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 11:48:05 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.

Sincerely,
Christi Dillon
175 Forest Ridge Rd Mooresville, NC 28117-6519
racegirl1971@yahoo.com

From: racegirl1971@everyactioncustom.com on behalf of [Christi Dillon](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 8:58:38 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Christi Dillon
175 Forest Ridge Rd Mooresville, NC 28117-6519
racegirl1971@yahoo.com



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Christi Dillon
175 Forest Ridge Rd
Mooresville, NC 28117-6519
racegirl1971@everyactioncustom.com
racegirl1971@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Christi Dillon:

Thank you for comments dated October 6th, 2019, October 9th, 2019 and October 19th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

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Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

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Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

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Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types

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of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for

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2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawī NAR. It is unlikely that the removal of the Hanawī NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the

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continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: clw2350@everyactioncustom.com on behalf of [Christina Williams](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 11:13:05 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Christina Williams
2350 Belmont Rd Arnoldsville, GA 30619-2615
clw2350@bellsouth.net



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September 3, 2021

Christina Williams
2350 Belmont Rd
Arnoldsville, GA 30619-2615
clw2350@everyactioncustom.com
clw2350@bellsouth.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Christina Williams:

Thank you for comments dated October 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

 Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: topherdean1@everyactioncustom.com on behalf of [Christopher Dean](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 10:39:37 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

A government of the people, by the people, for the people, not the few corporations. Let the people decide what happens.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Christopher Dean
55 -699 KAHEI Rd Hawi, HI 96719
topherdean1@gmail.com



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September 3, 2021

Christopher Dean
55 -699 KAHEI Rd
Hawaii, HI 96719
topherdean1@everyactioncustom.com
topherdean1@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Christopher Dean:

Thank you for comments date October 10th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: boom1385@everyactioncustom.com on behalf of [Christopher Helekahi](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 9:26:10 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Christopher Helekahi
213 Hooulu Ln Apt 1103 Wailuku, HI 96793-4103
boom1385@hotmail.com



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September 3, 2021

Christopher Helekahi
213 Hooulu Ln Apt 1103
Wailuku, HI 96793-4103
boom1385@hotmail.com
boom1385@everyactioncustom.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Christopher Helekahi:

Thank you for comments dated November 6th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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Letter to Christopher Helekahi

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: christopher_seymour@everyactioncustom.com on behalf of [Christopher Seymour](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 1:02:52 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Christopher Seymour
9326 Cropper Island Rd Newark, MD 21841-2106
christopher_seymour@yahoo.com

From: christopher_seymour@everyactioncustom.com on behalf of [Christopher Seymour](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 4:53:22 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Christopher Seymour
9326 Cropper Island Rd Newark, MD 21841-2106
christopher_seymour@yahoo.com



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September 3, 2021

Christopher Seymour
9326 Cropper Island Rd
Newark, MD 21841-2106
christopher_seymour @everyactioncustom.com
christopher_seymour@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Christopher Seymour:

Thank you for comments dated October 3rd, 2019 and October 8th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Christopher Seymour

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September 3, 2021

proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Letter to Christopher Seymour

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: ccackland@everyactioncustom.com on behalf of [Claire Ackland](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 9:26:58 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Claire Ackland
428 Colony Knoll Dr San Jose, CA 95123-1445
ccackland@ucdavis.edu



10238-04
September 3, 2021

Claire Ackland
428 Colony Knoll Dr
San Jose, CA 95123-1445
ccackland@everyactioncustom.com
ccackland@ucdavis.edu

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Claire Ackland:

Thank you for comments dated November 4th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Claire Ackland

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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Letter to Claire Ackland
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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: pirates0171@everyactioncustom.com on behalf of [Crystal Hart](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 6:52:20 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Crystal Hart
415 Evans Ridge Ter NE Leesburg, VA 20176-4477
pirates0171@yahoo.com

From: pirates0171@everyactioncustom.com on behalf of [Crystal Hart](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 6:37:23 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Crystal Hart
415 Evans Ridge Ter NE Leesburg, VA 20176-4477
pirates0171@yahoo.com



10238-04
September 3, 2021

Crystal Hart
415 Evans Ridge Ter NE
Leesburg, VA 20176-4477
pirates0171@everyactioncustom.com
pirates0171@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Crystal Hart:

Thank you for comments dated October 2nd, 2019 and October 8th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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Letter to Crystal Hart

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Letter to Crystal Hart
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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: wooflevi@everyactioncustom.com on behalf of [Dana Bleckinger](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 3:49:43 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Dana Bleckinger
1045 Driftwood Ln Yachats, OR 97498-9748
wooflevi@yahoo.com



10238-04
September 3, 2021

Ms. Dana Bleckinger
1045 Driftwood Lane
Yachats, OR 97498-9748
wooflevi@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Bleckinger:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Ms. Dana Bleckinger

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Letter to Ms. Dana Bleckinger

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September 3, 2021

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: dan@everyactioncustom.com on behalf of [Daniel Christener](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 7:53:47 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Daniel Christener
44 Nonohe Pl Paia, HI 96779-9701
dan@hawaiiactive.com



10238-04
September 3, 2021

Mr. Daniel Christener
44 Nonohe Place
Paia, HI 96779-9701
dan@hawaiiactive.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Christener:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Mr. Daniel Christener

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September 3, 2021

individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Letter to Mr. Daniel Christener

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: dgobthunder@everyactioncustom.com on behalf of [Daniel O'Brien](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 2:29:41 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Daniel O'Brien
36 Mulberry Ln Milton, NY 12547-5226
dgobthunder@hotmail.com



10238-04
September 3, 2021

Mr. Daniel O'Brien
36 Mulberry Lane
Milton, NY 12547-5226
dgobthunder@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Mr. O'Brien:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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Letter to Daniel O'Brien

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: cards433@everyactioncustom.com on behalf of [Daniel Smith](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 11, 2019 5:50:49 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.
How is there no or minimal environmental impact?

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Daniel Smith
433 Olomana St Apt A Kailua, HI 96734-2222
cards433@gmail.com



10238-04
September 3, 2021

Mr. Daniel Smith
433 Olomana Street, Apt A
Kailua, HI 96734-2222
Cards433@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Smith:

Thank you for comments dated October 11, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 2: *How is there no or minimal environmental impact?*

Response 2: The subject EIS document encompasses a broad analysis of environmental impacts associated with the Proposed Action.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: chevy_thunder_z@everyactioncustom.com on behalf of [Daviann McClurg](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 7:07:15 AM

Dear Mr. Matsukawa,

It's quite clear to me the DEIS does not address all of the concerns related to East Maui streams. There are many points to be made. Here are just a couple.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Daviann McClurg
621 Morris Ave Larned, KS 67550-2803
chevy_thunder_z@yahoo.com

From: chevy_thunder_z@everyactioncustom.com on behalf of [Daviann McClurg](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 4:22:48 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Daviann McClurg
621 Morris Ave Larned, KS 67550-2803
chevy_thunder_z@yahoo.com

From: chevy_thunder_z@everyactioncustom.com on behalf of [Daviann McClurg](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 4:19:55 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Daviann McClurg
621 Morris Ave Larned, KS 67550-2803
chevy_thunder_z@yahoo.com



10238-04
September 3, 2021

Ms. Daviann McClurg
621 Morris Avenue
Larned, KS 67550-2803
chevy_thunder_z@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Ms. McClurg:

Thank you for comments dated October 3, 2019, October 19, 2019, and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *It's quite clear to me the DEIS does not address all of the concerns related to East Maui streams. There are many points to be made. Here are just a couple.*

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

Response 1: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System

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to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 2: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 2: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

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Letter to Ms. Daviann McClurg

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Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 3: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 3: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management

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(CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered

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factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 4: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 4: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow

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are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 5: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 5: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up

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20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative. Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 6: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 6: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the

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Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 7: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 7: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum

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available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 8: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 8: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native

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species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 9: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 9: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 10: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

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Response 10: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawī NAR. It is unlikely that the removal of the Hanawī NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

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Comment 11: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 11: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Comment 12: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to Makai.*

Response 12: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access

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roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The

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available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: pcd@everyactioncustom.com on behalf of [David Perreira](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 5:50:14 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
David Perreira
Honolulu, HI 96822
pcd@gmail.com



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September 3, 2021

Mr. David Perreira
Honolulu, HI 96822
pcd@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Perreira:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources

A&B / EMI, Applicant

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From: debsheahoran@everyactioncustom.com on behalf of [Deb Horan](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 12:53:19 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Deb Horan
619 Old School House Dr Springfield, PA 19064-1543
debsheahoran@aol.com



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September 3, 2021

Ms. Deb Horan
619 Old School House Drive
Springfield, PA 19064-1543
debsheahoran@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Horan:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Ms. Deb Horan

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: orchid6128@everyactioncustom.com on behalf of [deb mader](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 5:21:54 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
deb mader
PO Box 2123 Kihei, HI 96753-2123
orchid6128@aol.com



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September 3, 2021

Ms. Deb Mader
P.O. Box 2123
Kihei, HI 96753-2123
orchid6128@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Mader:

Thank you for comments dated October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Ms. Deb Mader

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Letter to Ms. Deb Mader

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: centauress6@everyactioncustom.com on behalf of [Denise Lytle](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 7:37:49 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Denise Lytle
3207 Plaza Dr Woodbridge, NJ 07095-1141
centauress6@live.com

From: centauress6@everyactioncustom.com on behalf of [Denise Lytle](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 6:28:53 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Denise Lytle
3207 Plaza Dr Woodbridge, NJ 07095-1141
centauress6@live.com

From: centauress6@everyactioncustom.com on behalf of [Denise Lytle](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 4:04:38 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Denise Lytle
3207 Plaza Dr Woodbridge, NJ 07095-1141
centauress6@live.com



10238-04
September 3, 2021

Ms. Denise Lytle
3207 Plaza Drive
Woodbridge, NJ 07095-1141
centauress6@live.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Ms. Lytle:

Thank you for comments dated October 3, 2019, October 9, 2019, and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai'i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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Comment 2: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 2: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program

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(formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: mysa_nal@everyactioncustom.com on behalf of [Denise Romesburg](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:20:51 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Denise Romesburg
7326 N 21st Ave Phoenix, AZ 85021-7812
mysa_nal@yahoo.com



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September 3, 2021

Ms. Denise Romesburg
7326 N 21st Avenue
Phoenix, AZ 85021-7812
mysa_nal@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Romesburg:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: deae@everyactioncustom.com on behalf of [Diane Ethridge](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:44:53 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Diane Ethridge
335 S Rivershire Dr Conroe, TX 77304-2730
deae@consolidated.net



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September 3, 2021

Ms. Diane Ethridge
335 S. Rivershire Drive
Conroe, TX 77304-2730
deae@consolidated.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Ethridge:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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From: jdkent@everyactioncustom.com on behalf of [Diane Kent](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 5:48:27 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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Sincerely,
Diane Kent
23733 N Scottsdale Rd Unit 1021 Scottsdale, AZ 85255-3792
jdkent@aol.com



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September 3, 2021

Ms. Diane Kent
23733 N. Scottsdale Road, Unit 1021
Scottsdale, AZ 85255-3792
jdkent@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Kent:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Ms. Diane Kent

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: libb_00@everyactioncustom.com on behalf of [Dominic Libby](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 8:28:32 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Dominic Libby
63 Middleton Rd Milton, NH 03851-4722
libb_00@yahoo.com



10238-04
September 3, 2021

Dominic Libby
63 Middleton Road
Milton, NH 03851-4722
libb_00@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Dominic Libby:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Dominic Libby

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: amazonpowerplus@everyactioncustom.com on behalf of [Donna Fischer](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 7:18:25 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Donna Fischer
PO Box 1071 Pahoehoe, HI 96778-1071
amazonpowerplus@gmail.com



10238-04
September 3, 2021

Ms. Donna Fischer
P.O. Box 1071
Pahoa, HI 96778-1071
amazonpowerplus@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Fischer:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Ms. Donna Fischer

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: endant@everyactioncustom.com on behalf of [E.Neal](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 5:03:29 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
E. Neal
56 Alexandra Way Cape May Court House, NJ 08210-1153
endant@yahoo.com



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

E. Neal
56 Alexandra Way
Cape May Court House, NJ 08210-1153
endant @everyactioncustom.com
endant@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear E. Neal:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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September 3, 2021

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: elainebecker@everyactioncustom.com on behalf of [Elaine Becker](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 5:56:42 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Elaine Becker
2514 Sharmar Rd Roanoke, VA 24018-2625
elainebecker@yahoo.com



10238-04
September 3, 2021

Elaine Becker
2514 Sharmar Rd
Roanoke, VA 24018-2625
elainebecker@everyactioncustom.com
elainebecker@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Elaine Becker:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: ebalpine@everyactioncustom.com on behalf of [Elaine Benjamin](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 4:57:42 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Elaine Benjamin
2627 Eltinge Dr Alpine, CA 91901-2240
ebalpine@flash.net

From: ebalpine@everyactioncustom.com on behalf of [Elaine Benjamin](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 5:40:51 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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Sincerely,
Elaine Benjamin
2627 Eltinge Dr Alpine, CA 91901-2240
ebalpine@flash.net

From: ebalpine@everyactioncustom.com on behalf of [Elaine Benjamin](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 5:57:51 AM

Dear Mr. Matsukawa,

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2627 Eltinge Dr Alpine, CA 91901-2240
ebalpine@flash.net



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Elaine Benjamin
2627 Eltinge Dr
Alpine, CA 91901-2240
ebalpine@everyactioncustom.com
ebalpine@flash.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Elaine Benjamin:

Thank you for comments dated October 3, 2019, October 8, 2019 and October 19, 2019, regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Letter to Elaine Benjamin

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
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cc: Suzanne Case, Chair, Department of Land and Natural Resources
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From: elisa8094@everyactioncustom.com on behalf of [Elisa Plauche](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 11:14:51 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Elisa Plauche
PO Box 1336 Haiku, HI 96708-1336
elisa8094@aol.com

From: elisa8094@everyactioncustom.com on behalf of [Elisa Plauche](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 14, 2019 8:23:58 PM

Dear Mr. Matsukawa,

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elisa8094@aol.com

From: elisa8094@everyactioncustom.com on behalf of [Elisa Plauche](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 28, 2019 11:50:00 AM

Dear Mr. Matsukawa,

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10238-04
September 3, 2021

Elisa Plauche
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Haiku, HI 96708-1336
elisa8094@everyactioncustom.com
elisa8094@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Elisa Plauche

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Letter to Elisa Plauche
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September 3, 2021

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Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: elizabeth.watts@everyactioncustom.com on behalf of [Elizabeth Watts](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 11, 2019 3:33:43 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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Sincerely,
Elizabeth Watts
513 SE 27th Way Boynton Beach, FL 33435-8904
elizabeth.watts@verizon.net



10238-04
September 3, 2021

Elizabeth Watts
513 SE 27th Way
Boynton Beach, FL 33435-8904
elizabeth.watts@everyactioncustom.com
elizabeth.watts@verizon.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Elizabeth Watts:

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From: emilygarland@everyactioncustom.com on behalf of [Emily Garland](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 5:47:24 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Emily Garland
119 Kapiolani St Hilo, HI 96720-2675
emilygarland@gmail.com



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Emily Garland
119 Kapiolani St
Hilo, HI 96720-2675
emilygarland@everyactioncustom.com
emilygarland@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Emily Garland:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Emily Garland

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: oceanminded09@everyactioncustom.com on behalf of [Emily Van Alyne](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 6:31:52 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Emily Van Alyne
6749 Whitestone St West Richland, WA 99353-7405
oceanminded09@gmail.com



10238-04
September 3, 2021

Emily Van Alyne
6749 Whitestone St West
Richland, WA 99353-7405
oceanminded09@everyactioncustom.com
oceanminded09@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Emily Van Alyne:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: 2469b52b@everyactioncustom.com on behalf of [Eric Micha"el Leventhal](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 3:42:29 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Eric Micha'el Leventhal
Haiku, HI 96708
2469b52b@opayq.com



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10238-04
September 3, 2021

Eric Micha'el Leventhal
Haiku, HI 96708
2469b52b @everyactioncustom.com
2469b52b@opayq.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke'anae, Honomanū and Huelo License Areas

Dear Eric Micha'el Leventhal:

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Letter to Eric Micha'el Leventhal

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September 3, 2021

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Letter to Eric Micha'el Leventhal
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September 3, 2021

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: erik.schreiner@everyactioncustom.com on behalf of [Erik Schreiner](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, November 3, 2019 4:29:42 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Erik Schreiner
423 Chesterfield Rd Raleigh, NC 27608-1013
erik.schreiner@gmail.com



10238-04
September 3, 2021

Erik Schreiner
423 Chesterfield Rd
Raleigh, NC 27608-1013
erik.schreiner@everyactioncustom.com
erik.schreiner@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Erik Schreiner:

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September 3, 2021

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September 3, 2021

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From: erika.lechugadisalvo@everyactioncustom.com on behalf of [Erika Lechuga DiSalvo](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 7:35:57 AM

Dear Mr. Matsukawa,

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Haiku, HI 96708
erika.lechugadisalvo@gmail.com



WILSON OKAMOTO
C O R P O R A T I O N
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10238-04
September 3, 2021

Erika Lechuga DiSalvo
Haiku, HI 96708
erika.lechugadisalvo@everyactioncustom.com
erika.lechugadisalvo@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Erika Lechuga DiSalvo:

Thank you for comments dated October 10, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through

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several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: sacredearth70@everyactioncustom.com on behalf of [Eve Powers](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 6:13:35 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Water belongs to our citizens, not businesses!

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Eve Powers
5200 Paanau Rd Koloa, HI 96756-9430
sacredearth70@gmail.com



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10238-04
September 3, 2021

Eve Powers
5200 Paanau Rd
Koloa, HI 96756-9430
sacredearth70@everyactioncustom.com
sacredearth70@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Eve Powers:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: fayf355@everyactioncustom.com on behalf of [fay forman](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:15:56 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
fay forman
355 8th Ave Apt 9F New York, NY 10001-4889
fayf355@yahoo.com



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10238-04
September 3, 2021

Fay Forman
355 8th Ave Apt 9F
New York, NY 10001-4889
fayf355@everyactioncustom.com
fayf355@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Fay Forman:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: g.roy7777@everyactioncustom.com on behalf of [G.Roy](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 5:39:57 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
G Roy
12 Ala Moana St Lahaina, HI 96761-1791
g.roy7777@yahoo.com



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10238-04
September 3, 2021

G Roy
12 Ala Moana St
Lahaina, HI 96761-1791
g.roy7777@everyactioncustom.com
g.roy7777@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear G Roy:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: igailroberts@everyactioncustom.com on behalf of [Gail Roberts](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:46:06 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Gail Roberts
PO Box A Pmb 70 Tecate, CA 91980-0656
igailroberts@gmail.com



WILSON OKAMOTO
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10238-04
 September 3, 2021

Gail Roberts
 PO Box A Pmb 70
 Tecate, CA 91980-0656
 igailroberts@everyactioncustom.com
 igailroberts@gmail.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Gail Roberts:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: gag888@everyactioncustom.com on behalf of [Gary Goetz](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 11:09:13 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Gary Goetz
935 Lighthouse Ave Apt 14 Pacific Grove, CA 93950-2450
gag888@hotmail.com

From: gag888@everyactioncustom.com on behalf of [Gary Goetz](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 12:35:33 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Gary Goetz
935 Lighthouse Ave Pacific Grove, CA 93950-2452
gag888@hotmail.com



10238-04
September 3, 2021

Gary Goetz
935 Lighthouse Ave
Pacific Grove, CA 93950-2452
gag888@everyactioncustom.com
gag888@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Gary Goetz:

Thank you for comments dated October 3, 2019 and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: molnarhaley@everyactioncustom.com on behalf of [Haley Molnar](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 2:10:03 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Haley Molnar
4607 Lehua St Kapaa, HI 96746-1754
molnarhaley@gmail.com



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10238-04
September 3, 2021

Haley Molnar
4607 Lehua St
Kapaa, HI 96746-1754
molnarhaley@everyactioncustom.com
molnarhaley@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Haley Molnar:

Thank you for comments dated October 10, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: [Hekayat Hajjafari \(hekayat@hawaii.edu\) Sent You a Personal Message](mailto:hekayat@hawaii.edu)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, December 27, 2019 8:42:36 AM

Dear Wilson Okamoto Corporation,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,

Hekayat Hajjafari
general delivery
hanapepe, HI 96716
hekayat@hawaii.edu
(808) 683-6554

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at core.help@sierraclub.org or (415) 977-5500 for more information.



10238-04
September 3, 2021

Hekayat Hajjafari
Hanapepe, HI 96716
hekayat@everyactioncustom.com
hekayat@hawaii.edu
(808) 683-6554

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Hekayat Hajjafari:

Thank you for comments dated December 27, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Hekayat Hajjafari

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
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From: ncamaui@everyactioncustom.com on behalf of [ivan kekahuna](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, November 12, 2019 2:21:06 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui or for any other reasons, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Ivan Kekahuna
Resident/landowner
East Maui

Sincerely,
ivan kekahuna
540 Lower Nahiku Rd Haiku, HI 96708-5791
ncamaui@gmail.com



WILSON OKAMOTO
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10238-04
September 3, 2021

Ivan Kekahuna
540 Lower Nahiku Rd
Haiku, HI 96708-5791
ncamaui@everyactioncustom.com
ncamaui@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ivan Kekahuna:

Thank you for comments dated November 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Ivan Kekahuna

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September 3, 2021

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: frostjacquelinec@everyactioncustom.com on behalf of [Jacqueline Frost](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 9:25:12 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jacqueline Frost
Hana, HI 96713
frostjacquelinec@gmail.com



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September 3, 2021

Jacqueline Frost
Hana, HI 96713
frostjacquelinec@everyactioncustom.com
frostjacquelinec@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jacqueline Frost:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: jjinparadise@everyactioncustom.com on behalf of [Jacqui Skill](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 4:42:05 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jacqui Skill
3875 Lower Honoapiilani Rd Lahaina, HI 96761-9300
jjinparadise@gmail.com



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C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Jacqui Skill
3875 Lower Honoapiilani Rd
Lahaina, HI 96761-9300
jjinparadise@everyactioncustom.com
jjinparadise@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jacqui Skill:

Thank you for comments dated October 8, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: jimdimunno@everyactioncustom.com on behalf of [James DiMunno](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 3:14:47 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
James DiMunno
4850 37th St Long Island City, NY 11101-1949
jimdimunno@yahoo.com



WILSON OKAMOTO
 CORPORATION
 INNOVATORS • PLANNERS • ENGINEERS

10238-04
 September 3, 2021

James DiMunno
 4850 37th St
 Long Island City, NY 11101-1949
 jimdimunno@everyactioncustom.com
 jimdimunno@yahoo.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear James DiMunno:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to James DiMunno

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September 3, 2021

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September 3, 2021

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: springhead.jg@everyactioncustom.com on behalf of [Jamie Green](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:21:55 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jamie Green
9727 Sweetwater Ln Ventura, CA 93004-2884
springhead.jg@gmail.com



10238-04
September 3, 2021

Jamie Green
9727 Sweetwater Ln
Ventura, CA 93004-2884
springhead.jg@everyactioncustom.com
springhead.jg@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jamie Green:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: hdleys1@everyactioncustom.com on behalf of [Jamie Shultz](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:15:54 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jamie Shultz
Morgantown, WV 26508
hdleys1@hotmail.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Jamie Shultz
Hdleys1@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jamie Shultz:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: giselle351@everyactioncustom.com on behalf of [janet forman](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, November 3, 2019 2:47:50 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
janet forman
351 W 24th St Apt 12C New York, NY 10011-1514
giselle351@gmail.com



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September 3, 2021

Janet Forman
351 W 24th St Apt 12C
New York, NY 10011-1514
giselle351@everyactioncustom.com
giselle351@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Janet Forman:

Thank you for comments dated November 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: menjavi@everyactioncustom.com on behalf of [Javier Mendez](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:30:29 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Javier Mendez
1326 Alewa Dr Apt B Honolulu, HI 96817-1200
menjavi@gmail.com

From: menjavi@everyactioncustom.com on behalf of [Javier Mendez](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 5:19:13 PM

Dear Mr. Matsukawa,

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1326 Alewa Dr Apt B Honolulu, HI 96817-1200
menjavi@gmail.com

From: menjavi@everyactioncustom.com on behalf of [Javier Mendez](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 2:03:20 PM

Dear Mr. Matsukawa,

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Javier Mendez
1326 Alewa Dr Apt B Honolulu, HI 96817-1200
menjavi@gmail.com

From: menjavi@everyactioncustom.com on behalf of [Javier Mendez](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 1:28:49 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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1326 Alewa Dr Apt B Honolulu, HI 96817-1200
menjavi@gmail.com



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September 3, 2021

Javier Mendez
1326 Alewa Dr Apt B
Honolulu, HI 96817-1200
menjavi@everyactioncustom.com
menjavi@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Javier Mendez:

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: jeffreyf@everyactioncustom.com on behalf of [Jeffrey Friedman](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:17:06 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jeffrey Friedman
2933 Baldwin Ave Makawao, HI 96768-9640
jeffreyf@momi.org



WILSON OKAMOTO
C O R P O R A T I O N
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10238-04
September 3, 2021

Jeffrey Friedman
2933 Baldwin Ave
Makawao, HI 96768-9640
jeffreyf@everyactioncustom.com
jeffreyf@momi.org

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jeffrey Friedman:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: xandysmom@everyactioncustom.com on behalf of [Jennifer Hayes](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 17, 2019 7:31:25 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jennifer Hayes
2312 St James Pl Modesto, CA 95350-1716
xandysmom@aol.com

From: xandysmom@everyactioncustom.com on behalf of [Jennifer Hayes](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 20, 2019 4:57:41 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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September 3, 2021

Jennifer Hayes
2312 St James Pl
Modesto, CA 95350-1716
xandysmom@everyactioncustom.com
xandysmom@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jennifer Hayes:

Thank you for comments dated October 17, 2019 and October 20, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: faboo1028@everyactioncustom.com on behalf of [Jennifer Valentine](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 6:20:02 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jennifer Valentine
313 1st Ave Massapequa Park, NY 11762-1850
faboo1028@yahoo.com

From: faboo1028@everyactioncustom.com on behalf of [jennifer valentine](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 21, 2019 6:37:35 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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Sincerely,
jennifer valentine
313 1st Ave Massapequa Park, NY 11762-1850
faboo1028@yahoo.com

From: faboo1028@everyactioncustom.com on behalf of [jennifer valentine](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, November 3, 2019 7:44:28 AM

Dear Mr. Matsukawa,

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jennifer valentine
313 1st Ave Massapequa Park, NY 11762-1850
faboo1028@yahoo.com



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September 3, 2021

Jennifer Valentine
313 1st Ave
Massapequa Park, NY 11762-1850
faboo1028@everyactioncustom.com
faboo1028@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jennifer Valentine:

Thank you for comments dated October 2, 2019, October 21, 2019 and November 3, 2019, regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: aweaujhalani@everyactioncustom.com on behalf of [Jhalani Aweau](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 16, 2019 8:43:49 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jhalani Aweau
2817 Koea Pl Makawao, HI 96768-8718
aweaujhalani@gmail.com

From: aweaujhalani@everyactioncustom.com on behalf of [Jhalani Aweau](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 11:29:44 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jhalani Aweau
2817 Koea Pl Makawao, HI 96768-8718
aweaujhalani@gmail.com

From: aweaujhalani@everyactioncustom.com on behalf of [Jhalani Aweau](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 6:07:48 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jhalani Aweau
2817 Koea Pl Makawao, HI 96768-8718
aweaujhalani@gmail.com

From: aweaujhalani@everyactioncustom.com on behalf of [Jhalani Aweau](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 2:18:45 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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Sincerely,
Jhalani Aweau
2817 Koea Pl Makawao, HI 96768-8718
aweaujhalani@gmail.com

From: aweaujhalani@everyactioncustom.com on behalf of [Jhalani Aweau](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 6:48:57 AM

Dear Mr. Matsukawa,

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Not pono

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Sincerely,
Jhalani Aweau
2817 Koea Pl Makawao, HI 96768-8718
aweaujhalani@gmail.com

From: aweaujhalani@everyactioncustom.com on behalf of [Jhalani Aweau](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 1:12:16 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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2817 Koea Pl Makawao, HI 96768-8718
aweaujhalani@gmail.com



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Jhalani Aweau
2817 Koea Pl
Makawao, HI 96768-8718
aweaujhalani@everyactioncustom.com
aweaujhalani@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jhalani Aweau:

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Letter to Jhalani Aweau

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: aweau.jhianna@everyactioncustom.com on behalf of [Jhianna Aweau](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 16, 2019 8:43:50 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jhianna Aweau
Makawao, HI 96768
aweau.jhianna@gmail.com



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September 3, 2021

Jhianna Aweau
Makawao, HI 96768
aweau.jhianna@everyactioncustom.com
aweau.jhianna@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jhianna Aweau:

Thank you for comments dated October 16, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through

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several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: JIMHEADJR@everyactioncustom.com on behalf of [Jim Head](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:22:00 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jim Head
15307 Northgate Blvd Apt 201 Oak Park, MI 48237-1220
JIMHEADJR@HOTMAIL.COM

From: jimheadjr@everyactioncustom.com on behalf of [Jim Head](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:16:06 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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Sincerely,
Jim Head
15307 Northgate Blvd Apt 201 Oak Park, MI 48237-1220
jimheadjr@hotmail.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Jim Head
15307 Northgate Blvd Apt 201
Oak Park, MI 48237-1220
jimheadjr@everyactioncustom.com
jimheadjr@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jim Head:

Thank you for comments dated October 2, 2019 and November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: joan@everyactioncustom.com on behalf of [Joan Heartfield PhD](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 9:43:27 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Joan Heartfield PhD
232 Door Of Faith Rd Haiku, HI 96708-5740
joan@talkinghearts.com

From: joan@everyactioncustom.com on behalf of [Joan Heartfield PhD](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 7:13:12 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Joan Heartfield PhD
232 Door Of Faith Rd Haiku, HI 96708-5740
joan@talkinghearts.com



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September 3, 2021

Joan Heartfield PhD
232 Door Of Faith Rd
Haiku, HI 96708-5740
joan@everyactioncustom.com
joan@talkinghearts.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Joan Heartfield PhD:

Thank you for comments dated October 3, 2019 and October 9, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui

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communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units

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in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy"

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where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

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Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

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Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is

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within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex

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mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: jmjkla@everyactioncustom.com on behalf of [Joann Koch](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 11:22:25 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui.

Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Joann Koch
134 Olenick Rd Lebanon, CT 06249-2026
jmjkla@yahoo.com



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September 3, 2021

Joann Koch
134 Olenick Rd
Lebanon, CT 06249-2026
jmjkla@everyactioncustom.com
jmjkla@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Joann Koch:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: jodyg8@everyactioncustom.com on behalf of [Jody Gibson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 12:32:22 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jody Gibson
317 E Wall Ave Des Moines, IA 50315-5259
jodyg8@msn.com

From: jodyg8@everyactioncustom.com on behalf of [Jody Gibson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 12:06:13 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jody Gibson
317 E Wall Ave Des Moines, IA 50315-5259
jodyg8@msn.com

From: jodyg8@everyactioncustom.com on behalf of [Jody Gibson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 7:43:29 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jody Gibson
317 E Wall Ave Des Moines, IA 50315-5259
jodyg8@msn.com



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September 3, 2021

Jody Gibson
317 E Wall Ave
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jodyg8@msn.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jody Gibson:

Thank you for comments dated October 3, 2019, October 19, 2019 and November 2, 2019, regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: jjlittle@everyactioncustom.com on behalf of [John Little](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:39:08 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
John Little
807 S Mountain Ave Ashland, OR 97520-3247
jjlittle@charter.net



10238-04
September 3, 2021

John Little
807 S Mountain Ave
Ashland, OR 97520-3247
jjlittleve@ryactioncustom.com
jjlittle@charter.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear John Little:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Letter to John Little
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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: jandjoda@everyactioncustom.com on behalf of [John Oda](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:51:19 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
John Oda
San Francisco, CA 94115
jandjoda@aol.com



10238-04
September 3, 2021

John Oda
San Francisco, CA 94115
jandjoda@everyactioncustom.com
jandjoda@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear John Oda:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: sumsym@everyactioncustom.com on behalf of [Jon Krueger](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 1:28:35 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jon Krueger
5843 Seymour Rd Jackson, MI 49201-9607
sumsym@yahoo.com



WILSON OKAMOTO
 CORPORATION
 INNOVATORS • PLANNERS • ENGINEERS

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 September 3, 2021

Jon Krueger
 5843 Seymour Rd
 Jackson, MI 49201-9607
 sumsym@everyactioncustom.com
 sumsym@yahoo.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Jon Krueger:

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Letter to Jon Krueger
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September 3, 2021

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September 3, 2021

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: boyne@everyactioncustom.com on behalf of [Jonathan Boyne](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:33:30 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jonathan Boyne
2013 Kakela Dr Honolulu, HI 96822-2158
boyne@hawaii.edu

From: boyne@everyactioncustom.com on behalf of [Jonathan Boyne](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 4:41:50 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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Jonathan Boyne
2013 Kakela Dr Honolulu, HI 96822-2158
boyne@hawaii.edu

From: boyne@everyactioncustom.com on behalf of [Jonathan Boyne](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 14, 2019 10:10:35 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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Sincerely,
Jonathan Boyne
2013 Kakela Dr Honolulu, HI 96822-2158
boyne@hawaii.edu

From: boyne@everyactioncustom.com on behalf of [Jonathan Boyne](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:29:26 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease.

These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jonathan Boyne
2013 Kakela Dr Honolulu, HI 96822-2158
boyne@hawaii.edu



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Jonathan Boyne
2013 Kakela Dr
Honolulu, HI 96822-2158
boyne@everyactioncustom.com
boyne@hawaii.edu

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jonathan Boyne:

Thank you for comments dated October 2, 2019, October 8, 2019, October 14, 2019, October 18, 2019 and November 1, 2019, regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui

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communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units

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in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy"

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where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

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Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

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Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is

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within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poeciliid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poeciliid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poeciliid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poeciliid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support

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the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: jshiffrin200111213@everyactioncustom.com on behalf of [joyce shiffrin](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 6:01:04 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
joyce shiffrin
Brooklyn, NY 11225
jshiffrin200111213@yahoo.com

From: JSHIFFRIN200111213@everyactioncustom.com on behalf of [joyce shiffrin](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 5:44:07 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
joyce shiffrin
576 Eastern Pkwy Apt 3H Brooklyn, NY 11225-1609
JSHIFFRIN200111213@YAHOO.COM



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September 3, 2021

Joyce Shiffrin
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Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Keʻanae, Honomanū and Huelo License Areas

Dear Joyce Shiffrin:

Thank you for comments dated October 3rd, 2019 and October 19th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawaiʻi Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: pheralicious@everyactioncustom.com on behalf of [Judith Hazelton](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 4:39:54 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Judith Hazelton
1617 US Route 7 S Bennington, VT 05201-9384
pheralicious@yahoo.com



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September 3, 2021

Judith Hazelton
1617 US Route 7 S
Bennington, VT 05201-9384
pheralicious@everyactioncustom.com
pheralicious@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Judith Hazelton:

Thank you for comments dated October 3rd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: ugetwell@everyactioncustom.com on behalf of [Julia Landress](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 5:24:07 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Julia Landress
215 N Loop 1604 E San Antonio, TX 78232-1276
ugetwell@gmail.com



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September 3, 2021

Julia Landress
215 N Loop 1604 E
San Antonio, TX 78232-1276
ugetwell@everyactioncustom.com
ugetwell@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Julia Landress:

Thank you for comments dated November 1st, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Julia Landress

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September 3, 2021

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cc: Suzanne Case, Chair, Department of Land and Natural Resources
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From: jford29105@everyactioncustom.com on behalf of [Julie Ford](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 11:05:11 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Julie Ford
1461 Pelham Rd Unit 132I Seal Beach, CA 90740-4072
jford29105@aol.com

From: jford29105@everyactioncustom.com on behalf of [Julie Ford](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 4:49:01 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Let's do the right thing here.

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Sincerely,
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1461 Pelham Rd Unit 132I Seal Beach, CA 90740-4072
jford29105@aol.com

From: jford29105@everyactioncustom.com on behalf of [Julie Ford](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 5:07:28 PM

Dear Mr. Matsukawa,

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Sincerely,
Julie Ford
Seal Beach, CA 90740
jford29105@aol.com



10238-04
September 3, 2021

Julie Ford
1461 Pelham Rd Unit 132I
Seal Beach, CA 90740-4072
jford29105@everyactioncustom.com
jford29105@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Julie Ford:

Thank you for comments dated October 3rd2019, October 8th 2019 and November 1st 2019, regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Julie Ford

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
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cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: justineking@everyactioncustom.com on behalf of [Justine King](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 11:15:14 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Justine King
444 E 75th St Apt 7C New York, NY 10021-3444
justineking@netscape.net



10238-04
September 3, 2021

Justine King
444 E 75th St Apt 7C
New York, NY 10021-3444
justineking@everyactioncustom.com
justineking@netscape.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Justine King:

Thank you for comments dated October 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Justine King

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September 3, 2021

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: silver_kd@everyactioncustom.com on behalf of [k_danowski](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:24:07 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
k danowski
15 Bower Hill Rd Apt 801 Pittsburgh, PA 15228-1437
silver_kd@yahoo.com



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September 3, 2021

K Danowski
15 Bower Hill Rd Apt 801
Pittsburgh, PA 15228-1437
silver_kd@everyactioncustom.com
silver_kd@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear K Danowski:

Thank you for comments dated October 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: kapulani66@everyactioncustom.com on behalf of [Kapulani Antonio](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 14, 2019 10:14:24 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water ma uka to ma kai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kapulani Antonio
2710 Iolani St Makawao, HI 96768-8751
kapulani66@gmail.com



10238-04
September 3, 2021

Kapulani Antonio
2710 Iolani St
Makawao, HI 96768-8751
kapulani66@everyactioncustom.com
kapulani66@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Kapulani Antonio:

Thank you for comments dated October 14th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Kapulani Antonio

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Letter to Kapulani Antonio

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September 3, 2021

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: karenwinslow51@everyactioncustom.com on behalf of [Karen Winslow](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 8:32:11 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Karen Winslow
991 Malaihi Rd Wailuku, HI 96793-8703
karenwinslow51@gmail.com



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September 3, 2021

Karen Winslow
991 Malaihi Rd
Wailuku, HI 96793-8703
karenwinslow51@everyactioncustom.com
karenwinslow51@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Karen Winslow:

Thank you for comments dated November 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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September 3, 2021

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: kayersmaui@everyactioncustom.com on behalf of [Katharine Ayers](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 10:39:34 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Let's honor a balanced ecology for Maui!!!

Sincerely,
Katharine Ayers
99 Ala Apapa Pl Makawao, HI 96768-8465
kayersmaui@gmail.com



10238-04
September 3, 2021

Katharine Ayers
99 Ala Apapa Pl
Makawao, HI 96768-8465
kayersmaui@everyactioncustom.com
kayersmaui@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Katharine Ayers:

Thank you for comments dated November 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Thank you for this opportunity to submit comments on this Draft EIS. Let’s honor a balanced ecology for Maui!!!*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kate@everyactioncustom.com on behalf of [Katherine Leahy](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:45:00 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Katherine Leahy
32888 Palomares Rd Castro Valley, CA 94552-9612
kate@sonic.net



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September 3, 2021

Katherine Leahy
32888 Palomares Rd
Castro Valley, CA 94552-9612
kate@everyactioncustom.com
kate@sonic.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Katherine Leahy:

Thank you for comments dated November 1st, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kms_smith@everyactioncustom.com on behalf of [Kathleen Smith](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 5, 2019 6:50:30 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

- The DEIS assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussion about how non-diverted streams would benefit East Maui ecosystems and communities.
- The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather, except to say that it's estimated all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream-life habitat and impact thousands of local residents.
- The DEIS does not sufficiently analyze the threat and damage caused to native aquatic species by the diversions.
- The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and function of the watershed lands.
- The DEIS should give in depth review of and support for shorter-term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.
- The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.
- The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.

East Maui's communities have waited over 20 years for an EIS that discusses the real impacts of the longtime East Maui stream diversions. The DEIS should comprehensively address the harm the diversions have caused to the East Maui watershed

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kathleen Smith
350 E Taylor St San Jose, CA 95112-3161
kms_smith@yahoo.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Ms. Kathleen Smith
350 E. Taylor Street
San Jose, CA 95112
Kms_smith@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Smith:

Thank you for comments dated October 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: -- *The DEIS assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussion about how non-diverted streams would benefit East Maui ecosystems and communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

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The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 4: -- *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather, except to say that it's estimated all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream-life habitat and impact thousands of local residents.*

Response 4: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is

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actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 5: -- *The DEIS does not sufficiently analyze the threat and damage caused to native aquatic species by the diversions.*

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Response 5: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not

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an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 6: -- *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and function of the watershed lands.*

Response 6: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 7: -- *The DEIS should give in depth review of and support for shorter-term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 7: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters.

However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years.

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Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 8: -- *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 8: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity

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of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawī NAR. It is unlikely that the removal of the Hanawī NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

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Comment 9: -- *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 9: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that

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anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Comment 10: *East Maui's communities have waited over 20 years for an EIS that discusses the real impacts of the longtime East Maui stream diversions. The DEIS should comprehensively address the harm the diversions have caused to the East Maui watershed*

Response 10: We acknowledge your comments. Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion

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impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kathyolavarri@everyactioncustom.com on behalf of [Kathy Olavarri](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, November 3, 2019 3:36:27 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS does not discuss public hiking in the report.

It does not include consequences of diverting streams and the effects on the animals.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kathy Olavarri
23394 Old Santa Cruz Hwy Los Gatos, CA 95033-8702
kathyolavarri@gmail.com



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Kathy Olavarri
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Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Kathy Olavarri:

Thank you for comments dated November 3rd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 2: *It does not include consequences of diverting Streams and the effects on the animals.*

Response 2: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

parative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

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Comment 3: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 3: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: katlogan@everyactioncustom.com on behalf of [Katrina Shortridge](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 6:44:57 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Katrina Shortridge
5893 SW Englewood Ave Corvallis, OR 97333-3959
katlogan@aol.com



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September 3, 2021

Katrina Shortridge
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Corvallis, OR 97333-3959
katlogan@everyactioncustom.com
katlogan@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Katrina Shortridge:

Thank you for comments dated November 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions

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individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: learkirsten@everyactioncustom.com on behalf of [Kirsten Lear](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 6:31:22 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kirsten Lear
Santa Fe, NM 87505
learkirsten@gmail.com

From: learkirsten@everyactioncustom.com on behalf of [Kirsten Lear](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 6:32:37 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kirsten Lear
219 Anita Pl Santa Fe, NM 87505-8805
learkirsten@gmail.com



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September 3, 2021

Kirsten Lear
Santa Fe, NM 87505
learkirsten@everyactioncustom.com
learkirsten@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Keʻanae, Honomanū and Huelo License Areas

Dear Kirsten Lear:

Thank you for comments dated October 3rd, 2019 and October 18th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawaiʻi Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

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Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

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Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

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Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

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Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the

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trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from

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the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-61 to 4-62.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poeciliid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poeciliid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poeciliid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poeciliid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: korynng@everyactioncustom.com on behalf of [Korynn Grenert](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 4:46:49 AM

Dear Mr. Matsukawa,

The proposal to further divert streams should be thrown out.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease.

These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely, Korynn Grenert

Sincerely,
Korynn Grenert
2427 Puunoa Pl Honolulu, HI 96816-3418
korynng@hawaii.edu

From: korynng@everyactioncustom.com on behalf of [Korynn Grenert](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 9:29:11 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Water should not be held in the monopolising hands of a private company like Alexander and Baldwin.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely, Korynn Grenert

Sincerely,
Korynn Grenert
2427 Puunoa Pl Honolulu, HI 96816-3418
korynng@hawaii.edu



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Korynn Grenert
2427 Puunoa Pl
Honolulu, HI 96816-3418
korynng@everyactioncustom.com
korynng@hawaii.edu

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Keʻanae, Honomanū and Huelo License Areas

Dear Korynn Grenert:

Thank you for comments dated October 10th, 2019 and November 2nd, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawaiʻi Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The proposal to further divert streams should be thrown out.*

Response 1: We acknowledge your comments.

Comment 2: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 2: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is

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actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 3: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

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Response 3: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSheP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable

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into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 4: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 4: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 5: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 5: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided,

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however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 6: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 6: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui

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(specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: kitgillette@everyactioncustom.com on behalf of [Kristin Gillette](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:38:31 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kristin Gillette
200 Hina Ave Apt M6 Kahului, HI 96732-1820
kitgillette@gmail.com



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Kristin Gillette
200 Hina Ave Apt M6
Kahului, HI 96732-1820
kitgillette@everyactioncustom.com
kitgillette@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Kristin Gillette:

Thank you for comments dated November 1st, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not

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needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kmilgner@everyactioncustom.com on behalf of [Kristina Lamons](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 5:54:27 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kristina Lamons
1014 W 16th St Houston, TX 77008-3428
kmilgner@gmail.com

From: kmilgner@everyactioncustom.com on behalf of [Kristina Lamons](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 7:04:50 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kristina Lamons
1014 W 16th St Houston, TX 77008-3428
kmilgner@gmail.com



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September 3, 2021

Kristina Lamons
1014 W 16th St
Houston, TX 77008-3428
knilgner@everyactioncustom.com
knilgner@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Kristina Lamons:

Thank you for comments dated October 3rd, 2019 and November 1st, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: kristyn377@everyactioncustom.com on behalf of [Kristyn MacPhail](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 12:09:38 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kristyn MacPhail
9236 W Euclid Ave Littleton, CO 80123-3101
kristyn377@yahoo.com



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10238-04
September 3, 2021

Kristyn MacPhail
9236 W Euclid Ave
Littleton, CO 80123-3101
kristyn377@everyactioncustom.com
kristyn377@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Kristyn Macphail:

Thank you for comments dated November 4th, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: kukahakalau@everyactioncustom.com on behalf of [Ku Kahakalau](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 4:54:19 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely, Ku Kahakalau, Ph.D.

Sincerely,
Ku Kahakalau
Hilo, HI 96727
kukahakalau@yahoo.com



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September 3, 2021

Kū Kahakalau, PhD
Hilo, HI 96727
kukahakalau@everyactioncustom.com
kukahakalau@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Kū Kahakalau, PhD:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui. On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through

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Letter to Kū Kahakalau, PhD

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: marshallteam@everyactioncustom.com on behalf of [L M](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 2:26:19 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
L M
Cypress, TX 77433
marshallteam@yahoo.com



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September 3, 2021

L.M.
marshallteam@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear L.M.:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: lancelevitt@everyactioncustom.com on behalf of [Lacey Levitt](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 4:13:59 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lacey Levitt
San Diego, CA 92120
lancelevitt@gmail.com

From: lancelevitt@everyactioncustom.com on behalf of [Lacey Levitt](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 4:17:04 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lacey Levitt
San Diego, CA 92120
lancelevitt@gmail.com



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10238-04
September 3, 2021

Ms. Lacey Levitt
laceylevitt@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Levitt:

Thank you for comments dated October 3, 2019 and October 9, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoia, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: lauraramirez87@everyactioncustom.com on behalf of [Laura Ramirez](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 10:42:21 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Laura Ramirez
4510 Kawaihau Rd Kapaa, HI 96746-1922
lauraramirez87@hotmail.com



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10238-04
September 3, 2021

Ms. Laura Ramirez
4510 Kawaihau Road
Kapaa, HI 96746
Lauraramirez87@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Ramirez:

Thank you for comments dated October 10, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: laurass7@everyactioncustom.com on behalf of [Lauren Amick](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 1:47:41 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lauren Amick
New York, NY 10011
laurass7@yahoo.com



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10238-04
September 3, 2021

Ms. Lauren Amick
Laurass7@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Amick:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: murdock_ls@everyactioncustom.com on behalf of [Lauren Murdock](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 9:43:20 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lauren Murdock
3940 Via Lucero Apt 16 Santa Barbara, CA 93110-1650
murdock_ls@hotmail.com



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10238-04
September 3, 2021

Ms. Lauren Murdock
3940 Via Lucero, Apt. 16
Santa Barbara, CA 93110
Murdock_ls@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Murdock:

Thank you for comments dated October 9, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Ms. Lauren Murdock

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September 3, 2021

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: lmr0107@everyactioncustom.com on behalf of [Lauren Richie](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, November 3, 2019 6:25:47 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lauren Richie
524 9th Ter Pleasant Grove, AL 35127-1538
lmr0107@aol.com



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10238-04
 September 3, 2021

Ms. Lauren Richie
 524 9th Terrace
 Pleasant Grove, AL 35127
 Lmr0107@aol.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Richie:

Thank you for comments dated November 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: dancerforpeace@everyactioncustom.com on behalf of [Lilli Ross](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 3:05:52 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lilli Ross
390 W End Ave New York, NY 10024-6107
dancerforpeace@gmail.com

From: dancerforpeace@everyactioncustom.com on behalf of [Lilli Ross](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 3:11:28 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lilli Ross
390 W End Ave New York, NY 10024-6107
dancerforpeace@gmail.com



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10238-04
 September 3, 2021

Ms. Lilli Ross
 390 W. End Avenue
 New York, NY 10024
 dancerforpeace@gmail.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Ross:

Thank you for comments dated October 3, 2019 and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: arnoldohana@everyactioncustom.com on behalf of [Linda Somera](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 7:03:59 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Linda Somera
15 Kulanihakoi St Apt 16E Kihei, HI 96753-7314
arnoldohana@mac.com



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10238-04
September 3, 2021

Ms. Linda Somera
15 Kulanihakoi Street, Apt. 16E
Kihei, HI 96753
arnoldohana@mac.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Somera:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: gherardi2@everyactioncustom.com on behalf of [Lisa Gherardi](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 3:13:19 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lisa Gherardi
Los Gatos, CA 95032
gherardi2@aol.com



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10238-04
September 3, 2021

Ms. Lisa Gherardi
Gherardi2@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Gherardi:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Ms. Lisa Gherardi

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: brinkstock@everyactioncustom.com on behalf of [Lisabette Brinkman](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 9:43:47 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lisabette Brinkman
308 E Anapamu St Santa Barbara, CA 93101-1304
brinkstock@gmail.com



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10238-04
September 3, 2021

Ms. Lisabette Brinkman
308 E Anapamu Street
Santa Barbara, CA 93101
brinkstock@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Brinkman:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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Letter to Ms. Lisabette Brinkman

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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Letter to Ms. Lisabette Brinkman
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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: mikai_77@everyactioncustom.com on behalf of [Liza H](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 8:25:36 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Liza H
227 Chisholm Pl Fort Wayne, IN 46825-6572
mikai_77@yahoo.com



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10238-04
 September 3, 2021

Ms. Liza H.
 227 Chisholm Place
 Fort Wayne, IN 46825
 Mikai_77@yahoo.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Liza H.:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: lonnajeaneveryactioncustom.com on behalf of [LONNA RICHMOND](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 7:34:20 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui.

Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
LONNA RICHMOND
185 Sunset Way Muir Beach, CA 94965-9754
lonnajeane@gmail.com

From: lonnajeaneveryactioncustom.com on behalf of [LONNA RICHMOND](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 6:28:56 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents, nor does it analyze sufficiently, the threat and damage the diversions have caused to native aquatic species.

Also the DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
LONNA RICHMOND
185 Sunset Way Muir Beach, CA 94965-9754
lonnajeaneveryactioncustom.com



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INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Ms. Lonna Richmond
185 Sunset Way
Muir Beach, CA 94965
lonnajeane@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Richmond:

Thank you for comments dated October 2, 2019 and October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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Letter to Ms. Lonna Richmond

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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Comment 2: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 2: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

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Letter to Ms. Lonna Richmond

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Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 3: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 3: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable

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watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: schreibdemstein@everyactioncustom.com on behalf of [Lorenz Steininger](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 9:03:10 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lorenz Steininger
Stafford, VA 22554
schreibdemstein@posteo.de



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CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Lorenz Steininger
schreibdemstein@posteo.de

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Steininger:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: loalfe70@everyactioncustom.com on behalf of [Lori Feiteira](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 9:02:17 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lori Feiteira
281 Awapuhi Pl Wailuku, HI 96793-2116
loalfe70@gmail.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Ms. Lori Feiteira
281 Awapuhi Place
Wailuku, HI 96793
Loalfe70@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Feiteira:

Thank you for comments dated October 9, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: costnerluc@everyactioncustom.com on behalf of [Lucas Costner](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 17, 2019 10:52:32 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lucas Costner
444 Pau St Honolulu, HI 96815-5107
costnerluc@gmail.com

From: costnerluc@everyactioncustom.com on behalf of [Lucas Costner](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 10:27:45 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lucas Costner
444 Pau St Apt H Honolulu, HI 96815-5108
costnerluc@gmail.com



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September 3, 2021

Mr. Lucas Costner
444 Pau Street, Apt. H
Honolulu, HI 96815
costnerluc@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Costner:

Thank you for comments dated October 17, 2019 and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

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The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly

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identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

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Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSheP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action

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alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of

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developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

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Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is

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within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid

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fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poeciliid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: lurline94510@everyactioncustom.com on behalf of [Lurline Bettencourt](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 10:43:15 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lurline Bettencourt
4510 Kawaihau Rd Kapaa, HI 96746-1922
lurline94510@yahoo.com



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10238-04
September 3, 2021

Ms. Lurline Bettencourt
4510 Kawaihau Road
Kapaa, HI 96746
Lurline94510@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Bettencourt:

Thank you for comments dated October 10, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: catslc@everyactioncustom.com on behalf of [Lynne C.](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:30:22 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lynne C.
6032 Kentworth Dr Holly Springs, NC 27540-7670
catslc@aol.com



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10238-04
September 3, 2021

Ms. Lynne C.
6032 Kentworth Drive
Holly Spring, NC 27540
catslc@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Lynne C.:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: iminihan@everyactioncustom.com on behalf of [Maka O Kalani Miinihan](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 2:33:57 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Maka O Kalani Miinihan
7192 Kalaniana'ole Hwy Ste Pm A143A Honolulu, HI 96825-1849
iminihan@gmail.com



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10238-04
September 3, 2021

Maka O Kalani Miinihan
7192 Kalanianaʻole Highway, Suite Pm A143A
Honolulu, HI 96825
lminihan@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Keʻanae, Honomanū and Huelo License Areas

Dear Maka O Kalani Miinihan:

Thank you for comments dated October 8, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawaiʻi Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: mgordon@everyactioncustom.com on behalf of [Marcy Gordon](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, November 3, 2019 3:55:39 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Marcy Gordon
1758 Dean St Brooklyn, NY 11233-3502
mgordon@pipeline.com



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10238-04
September 3, 2021

Ms. Marcy Gordon
1758 Dean Street
Brooklyn, NY 11233
mgordon@pipeline.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Gordon:

Thank you for comments dated November 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: asteim@everyactioncustom.com on behalf of [Maria Asteinza](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 1:29:34 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Maria Asteinza
7337 Austin St Forest Hills, NY 11375-6258
asteim@verizon.net

From: asteim@everyactioncustom.com on behalf of [Maria Asteinza](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 2:59:38 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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Sincerely,
Maria Asteinza
7337 Austin St Forest Hills, NY 11375-6258
asteim@verizon.net

From: asteim@everyactioncustom.com on behalf of [Maria Asteinza](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 1:18:44 AM

Dear Mr. Matsukawa,

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7337 Austin St Forest Hills, NY 11375-6258
asteim@verizon.net



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10238-04
 September 3, 2021

Ms. Maria Asteinza
 7337 Austin Street
 Forest Hills, NY 11375
 asteim@verizon.net

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Asteinza:

Thank you for comments dated October 3, 2019, October 19, 2019, and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: loveapeke@everyactioncustom.com on behalf of [Marie Michl](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:54:25 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Marie Michl
108 Whispering Pines Dr Rocky Mount, NC 27804-6332
loveapeke@yahoo.com

From: loveapeke@everyactioncustom.com on behalf of [Marie Michl](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 6:19:46 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

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Sincerely,
Marie Michl
108 Whispering Pines Dr Rocky Mount, NC 27804-6332
loveapeke@yahoo.com



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10238-04
 September 3, 2021

Ms. Marie Michl
 108 Whispering Pines Drive
 Rocky Mount, NC 27804
 loveapeke@yahoo.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Michl:

Thank you for comments dated October 2, 2019 and November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: oblomov237@everyactioncustom.com on behalf of [Mark Blandford](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, November 3, 2019 11:26:08 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Mark Blandford
2800 Randy St Amarillo, TX 79124-2309
oblomov237@gmail.com



WILSON OKAMOTO
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10238-04
September 3, 2021

Mr. Mark Blandford
2800 Randy Street
Amarillo, TX 79124
Oblomov237@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Blandford:

Thank you for comments dated November 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: mark@everyactioncustom.com on behalf of [Mark Reback](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 7:33:58 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Mark Reback
Los Angeles, CA 90039
mark@consumerwatchdog.org



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Mr. Mark Reback
mark@consumerwatchdog.org

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Reback:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be

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issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

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Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

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Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not

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an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-

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36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity

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of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in

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increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be

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limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: misssarge6@everyactioncustom.com on behalf of [MARY LOU ZEIS](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, November 10, 2019 4:13:31 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Stop from causing any more harm to the East Maui watershed.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
MARY LOU ZEIS
8691 Park Dr Hamburg, NY 14075-7321
misssarge6@aol.com



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Ms. Mary Lou Zeis
8691 Park Drive
Hamburg, NY 14075
Missarge6@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Zeis:

Thank you for comments dated November 10, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Stop from causing any more harm to the East Maui watershed.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: maryjo@everyactioncustom.com on behalf of [Mary Masters](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 9:56:23 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Mary Masters
1265 Naalae Rd Kula, HI 96790-7744
maryjo@bestmedia.com



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Ms. Mary Masters
1265 Naalae Road
Kula, HI 96790-7744
maryjo@bestmedia.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Masters:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

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The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly

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identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

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Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSheP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action

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alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of

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developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol

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to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access.

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For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex

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mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: mredish@everyactioncustom.com on behalf of [Maryellen Redish](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 7:23:41 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Maryellen Redish
671 S Riverside Dr Apt 9 Palm Springs, CA 92264-0649
mredish@aol.com

From: mredish@everyactioncustom.com on behalf of [Maryellen Redish](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 8:27:06 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Maryellen Redish
671 S Riverside Dr Apt 9 Palm Springs, CA 92264-0649
mredish@aol.com

From: mredish@everyactioncustom.com on behalf of [Maryellen Redish](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 5:28:39 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Maryellen Redish
671 S Riverside Dr Apt 9 Palm Springs, CA 92264-0649
mredish@aol.com



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September 3, 2021

Ms. Maryellen Redish
671 S. Riverside Drive, Apt. 9
Palm Springs, CA 92264
mredish@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Redish:

Thank you for comments dated October 2, 2019, October 9, 2019, and November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: nalugirl08@everyactioncustom.com on behalf of [Melanie Park](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 16, 2019 4:20:43 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Stop diverting water in the interests of big business.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Melanie Park
Kaneohe, HI 96744
nalugirl08@yahoo.com



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10238-04
September 3, 2021

Ms. Melanie Park
Nalugirl08@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Park:

Thank you for comments dated October 16, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: milolii12@everyactioncustom.com on behalf of [Melia Leslie](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 12, 2019 5:01:21 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Melia Leslie
95 -231 Kaopua Loop Mililani, HI 96789-1251
milolii12@yahoo.com



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September 3, 2021

Ms. Melia Leslie
95-231 Kaopua Loop
Mililani, HI 96789
Milolii12@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Leslie:

Thank you for comments dated October 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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September 3, 2021

The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: mheithaus@everyactioncustom.com on behalf of [Melissa Heithaus](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 5:07:53 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Melissa Heithaus
301 S Sherman St Ste 100 Richardson, TX 75081-4176
mheithaus@quine.com



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10238-04
September 3, 2021

Ms. Melissa Heithaus
301 S. Sherman Street, Suite 100
Richardson, TX 75081
mheithaus@quine.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Heithaus:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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Letter to Ms. Melissa Heithaus

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: mikeybondoc@everyactioncustom.com on behalf of [Michael Bondoc](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:41:39 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Michael Bondoc
5814 30th Ct E Ellenton, FL 34222-4366
mikeybondoc@yahoo.com

From: mikeybondoc@everyactioncustom.com on behalf of [Michael Bondoc](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:18:52 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Michael Bondoc
5814 30th Ct E Ellenton, FL 34222-4366
mikeybondoc@yahoo.com



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10238-04
September 3, 2021

Mr. Michael Bondoc
5814 30th Ct E
Ellenton, FL 34222
mikeybondoc@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Bondoc:

Thank you for comments dated October 2, 2019 and November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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Letter to Mr. Michael Bondoc

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Sincerely,



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Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: shivadario@everyactioncustom.com on behalf of [Michael daddario](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 7:32:54 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Michael daddario
PO Box 790917 Paia, HI 96779-0917
shivadario@yahoo.com



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10238-04
 September 3, 2021

Mr. Michael Daddario
 P.O. Box 790917
 Paia, HI 96779
 shivadario@yahoo.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Daddario:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Mr. Michael Daddario

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September 3, 2021

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Letter to Mr. Michael Daddario

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Sincerely,



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Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
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From: donohomd@everyactioncustom.com on behalf of [Michael Donohoe](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, November 7, 2019 7:46:00 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Michael Donohoe
10 Aolani Pl Paia, HI 96779-8116
donohomd@gmail.com



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10238-04
September 3, 2021

Mr. Michael Donohue
10 Aolani Place
Paia, HI 96779
donohomd@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Donohue:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Mr. Michael Donohue

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September 3, 2021

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: michaelhenderson@everyactioncustom.com on behalf of [Michael Henderson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 6:21:50 PM

Dear Mr. Matsukawa,

Please accept my comments in strong opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Michael Henderson
Huntington Beach, CA 92649
michaelhenderson@hotmail.com

From: michaelhenderson@everyactioncustom.com on behalf of [Michael Henderson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 6:47:48 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Michael Henderson
Huntington Beach, CA 92649
michaelhenderson@hotmail.com



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10238-04
September 3, 2021

Michael Henderson
Huntington Beach, CA 92649
michaelhenderson@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Henderson:

Thank you for comments dated October 2, 2019 and October 8, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Mr. Michael Henderson

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not

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Letter to Mr. Michael Henderson

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needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: m_stauber@everyactioncustom.com on behalf of [Michael Stauber](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 11:21:01 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Michael Stauber
PO Box 1656 Koloa, HI 96756-1656
m_stauber@msn.com



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10238-04
September 3, 2021

Mr. Michael Stauber
P.O. Box 1656
Koloa, HI 96756
M_stauber@msn.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Stauber:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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Letter to Mr. Michael Stauber

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September 3, 2021

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: mtomczyszyn@everyactioncustom.com on behalf of [Michael Tomczyszyn](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:24:25 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Michael Tomczyszyn
243 Ramsell St San Francisco, CA 94132-3140
mtomczyszyn@hotmail.com



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10238-04
September 3, 2021

Mr. Michael Tomczyszyn
243 Ramsell Street
San Francisco, CA 941323
mtomczyszyn@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Tomczyszyn:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Mr. Michael Tomczyszyn

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September 3, 2021

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September 3, 2021

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: white837@everyactioncustom.com on behalf of [Michael White](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 6:56:28 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Michael White
2009 N Central Ave Los Angeles, CA 90059-3400
white837@aol.com

From: white837@everyactioncustom.com on behalf of [Michael White](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 2:40:49 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Michael White
2009 N Central Ave Los Angeles, CA 90059-3400
white837@aol.com



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10238-04
 September 3, 2021

Mr. Michael White
 2008 N. Central Avenue
 Los Angeles, CA 90059
 White837@aol.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. White:

Thank you for comments dated October 3, 2019 and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: ravynsdaughter@everyactioncustom.com on behalf of [Mikki Chalker](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:20:40 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Mikki Chalker
119 Prospect St Binghamton, NY 13905-2328
ravynsdaughter@aol.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Mikki Chalker
119 Prospect Street
Binghamton, NY 13905
ravynsdaughter@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mikki Chalker:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

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The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly

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identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

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Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSheP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action

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alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of

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developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

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Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the

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Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid

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fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poeciliid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: sassysuecross@everyactioncustom.com on behalf of [Myrtle Sue Cross](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 8:15:01 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Myrtle Sue Cross
27 -1971 Kaaukai Pl Papaikou, HI 96781-7728
sassysuecross@yahoo.com



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10238-04
September 3, 2021

Ms. Myrtle Sue Cross
27-1971 Kaaukai Place
Papaikou, HI 96781
sassysuecross@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Cross:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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Letter to Ms. Myrtle Sue Cross

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kanakaokai@everyactioncustom.com on behalf of [Nadine Awana](#)
To: [Public Comment](#)
Subject: Unacceptable EIS Comments on A&B Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 10:42:00 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Nadine Awana
1134 Nakuluai St Wailuku, HI 96793-9479
kanakaokai@hotmail.com



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10238-04
September 3, 2021

Ms. Nadine Awana
1134 Nakuluai Street
Wailuku, HI 96793
kanakaokai@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Awana:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: justjoshin26@everyactioncustom.com on behalf of [Nancy Cohn](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 7:23:16 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Nancy Cohn
9240 Carmel Rd Atascadero, CA 93422-6302
justjoshin26@gmail.com

From: justjoshin26@everyactioncustom.com on behalf of [Nancy Cohn](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 6:10:45 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Nancy Cohn
9240 Carmel Rd Atascadero, CA 93422-6302
justjoshin26@gmail.com



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10238-04
September 3, 2021

Ms. Nancy Cohn
9240 Carmel Road
Atascadero, CA 93422
Justjoshin26@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Cohn:

Thank you for comments dated October 3, 2019 and October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: naneaclo@everyactioncustom.com on behalf of [Nanea Lo](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:13:03 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Nanea Lo
1017 16th Ave Apt A Honolulu, HI 96816-4197
naneaclo@gmail.com

From: naneaclo@everyactioncustom.com on behalf of [Nanea Lo](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 5:45:46 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Nanea Lo
1017 16th Ave Apt A Honolulu, HI 96816-4197
naneaclo@gmail.com

From: naneaclo@everyactioncustom.com on behalf of [Nanea Lo](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 10:33:06 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Nanea Lo
1017 16th Ave Apt A Honolulu, HI 96816-4197
naneaclo@gmail.com

From: naneaclo@everyactioncustom.com on behalf of [Nanea Lo](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 8:53:21 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Nanea Lo
1017 16th Ave Apt A Honolulu, HI 96816-4197
naneaclo@gmail.com



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10238-04
September 3, 2021

Ms. Nanea Lo
1017 16th Avenue, Apt. A
Honolulu, HI 96816
naneaclo@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Lo:

Thank you for comments dated October 2, 2019, October 9, 2019, October 19, 2019, and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: nanihoopiipascua@everyactioncustom.com on behalf of [Nanikoki Hoopii-Pascua](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, November 7, 2019 10:46:19 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.
The wai (water) is life for our people.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Nanikoki Hoopii-Pascua
269 Pico Tract Haiku, HI 96708-5849
nanihoopiipascua@icloud.com



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10238-04
September 3, 2021

Ms. Nanikoki Hoopii-Pascua
269 Pico Tract
Haiku, HI 96708
nanihoopiipascua@icloud.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Hoopii-Pascua:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Ms. Nanikoki Hoopii-Pascua

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Letter to Ms. Nanikoki Hoopii-Pascua

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: natplays@everyactioncustom.com on behalf of [Natalie Santiago](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 16, 2019 11:16:29 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Kawaiola-Water is life!

Sincerely,
Natalie Santiago
86 -430 Kuwale Rd Waianae, HI 96792-2711
natplays@icloud.com



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INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Ms. Natalie Santiago
86-430 Kuwale Road
Waianae, HI 96792
natplays@icloud.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Santiago:

Thank you for comments dated October 16, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: hoepagirl@everyactioncustom.com on behalf of [Natalie Van Leekwijck](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 2:02:32 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Natalie Van Leekwijck
444 Munn St Hazard, NE 68844-4436
hoepagirl@gmail.com

From: hoepagirl@everyactioncustom.com on behalf of [Natalie Van Leekwijck](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 1:21:43 PM

Dear Mr. Matsukawa,

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Natalie Van Leekwijck
444 Munn St Hazard, NE 68844-4436
hoepagirl@gmail.com

From: hoepagirl@everyactioncustom.com on behalf of [Natalie Van Leekwijck](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 2:06:09 PM

Dear Mr. Matsukawa,

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Natalie Van Leekwijck
400 Munn St Hazard, NE 68844-4436
hoepagirl@gmail.com



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10238-04
September 3, 2021

Ms. Natalie Van Leekwijck
400 Munn Street
Hazard, NE 68844
hoepagirl@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Van Leekwijck:

Thank you for comments dated October 3, 2019, October 9, 2019, and October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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cc: Suzanne Case, Chair, Department of Land and Natural Resources
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From: neilquarles@everyactioncustom.com on behalf of [Neil Quarles](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 6:06:27 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Neil Quarles
1912 Lightsey Rd Austin, TX 78704-4989
neilquarles@utexas.edu

From: neilquarles@everyactioncustom.com on behalf of [Neil Quarles](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 25, 2019 5:16:52 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Neil Quarles
1912 Lightsey Rd Austin, TX 78704-4989
neilquarles@utexas.edu



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10238-04
September 3, 2021

Mr. Neil Quarles
1912 Lightsey Road
Austin, TX 78704
neilquarles@utexas.edu

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Quarles:

Thank you for comments dated October 2, 2019 and October 25, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: nichole.inouye@everyactioncustom.com on behalf of [Nichole Inouye-Nohara](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 12, 2019 11:57:38 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Nichole Inouye-Nohara
Kihei, HI 96753
nichole.inouye@gmail.com



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10238-04
September 3, 2021

Ms. Nichole Inouye-Nohara
Nichole.inouye@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Inouye-Nohara:

Thank you for comments dated October 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: nijabliss@everyactioncustom.com on behalf of [Nija Rosamond](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 11:56:57 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Nija Rosamond
Mililani Place
Kihei Hawaii 96753

Sincerely,
Nija Rosamond
721 Mililani Pl Kihei, HI 96753-9365
nijabliss@gmail.com



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10238-04
September 3, 2021

Nija Rosamond
721 Mililani Place
Kihei, HI 96753
nijabliss@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Nija Rosamond:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Page 3
September 3, 2021

COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: jennahia@everyactioncustom.com on behalf of [Noelani Ahia](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 1:04:45 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Noelani Ahia
1949 Kahekili Hwy Wailuku, HI 96793-9202
jennahia@yahoo.com



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10238-04
September 3, 2021

Ms. Noelani Ahia
1949 Kahekili Highway
Wailuku, HI 96793
jennahia@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Ahia:

Thank you for comments dated October 10, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Ms. Noelani Ahia

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September 3, 2021

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Letter to Ms. Noelani Ahia
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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: patriciablair@everyactioncustom.com on behalf of [Patricia Blair](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 7:00:20 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Patricia Blair
25 Aulike St Kailua, HI 96734-2746
patriciablair@msn.com



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10238-04
September 3, 2021

Ms. Patricia Blair
25 Aulike Street
Kailua, HI 96734
patriciablair@msn.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Blair:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: pbdion06@everyactioncustom.com on behalf of [Patricia Dion](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:36:36 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Patricia Dion
22865 S Greystone Dr Strongsville, OH 44149-1068
pbdion06@yahoo.com



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10238-04
September 3, 2021

Ms. Patricia Dion
22865 S. Greystone Drive
Strongsville, OH 44149
Pbdion06@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Dion:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: paulkauka@everyactioncustom.com on behalf of [Paul Cullen](#)
To: [Public Comment](#)
Subject: I highly oppose Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 17, 2019 9:13:01 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Paul Cullen
9998 Kamehameha V Hwy Kaunakakai, HI 96748-6048
paulkauka@gmail.com



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10238-04
September 3, 2021

Mr. Paul Cullen
9998 Kamehameha V Highway
Kaunakakai, HI 96748
paulkauka@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Cullen:

Thank you for comments dated October 17, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: skazz999W@everyactioncustom.com on behalf of [Philip Ratcliff](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 5:42:27 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and affect thousands of local residents. The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Philip Ratcliff
4665 Tragen Ct SE Salem, OR 97302-3533
skazz999W@hotmail.com



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CORPORATION
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10238-04
September 3, 2021

Mr. Phillip Ratcliff
4665 Tragen Ct. SE
Salem, OR 97302
Skazz999W@htomail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Ratcliff:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Mr. Phillip Ratcliff

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

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The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is

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actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-61 to 4-67.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note

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that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the

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IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: therachelswoof@everyactioncustom.com on behalf of [Rachel Wolf](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 11:23:14 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Rachel Wolf
403 Emeline Ave Santa Cruz, CA 95060-2244
therachelswoof@gmail.com



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10238-04
September 3, 2021

Ms. Rachel Wolf
403 Emeline Avenue
Santa Cruz, CA 95060
therachelswoof@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Wolf:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: raphiell@everyactioncustom.com on behalf of [Raphiell Nolin](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 11:40:51 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Raphiell Nolin
284 Elilani St Makawao, HI 96768-8332
raphiell@gmail.com



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10238-04
September 3, 2021

Raphiell Nolin
284 Elilani Street
Makawao, HI 96768
raphiell@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Nolin:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: raisemail2000-divert@everyactioncustom.com on behalf of [Raymond Zahra](#)
To: [Public Comment](#)
Subject: Comment Regarding Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 8:07:30 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Raymond Zahra
1555 Horseshoe Dr Florissant, MO 63033-2523
raisemail2000-divert@yahoo.com



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10238-04
September 3, 2021

Mr. Raymond Zahra
1555 Horseshoe Drive
Florissant, MO 63033
Raisemail2000-divert@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Zahra:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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September 3, 2021

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: reynolds846@everyactioncustom.com on behalf of [Rebecca Reynolds](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 5, 2019 3:37:43 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. Invasive plants and animals are hurting the health and the function of the watershed lands. These are public lands that people should be allowed to reasonably access. Stagnant pools along diverted streams are breeding grounds for mosquitoes that have carried Dengue fever virus to East Maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Rebecca Reynolds
402 B Metuchen Dr Monroe Township, NJ 08831-7675
reynolds846@verizon.net

From: reynolds846@everyactioncustom.com on behalf of [Rebecca Reynolds](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 4:55:11 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Wouldn't discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities be beneficial?

How will the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather be restored? Do we really want to decimate 85% of native streamlife habitat and impact thousands of local residents by creating diversions?

Shouldn't there be a sufficient analysis of the threat and damage the diversions have caused to native aquatic species?

Shouldn't any plan or funding to manage the invasive species in the lower state lands they lease be included? These invasive plants and animals are hurting the health and the function of the watershed lands.

Shouldn't an in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies be discussed?

Shouldn't options for more public hiking access to public lands in the proposed lease area be discussed without every hiker needing to get permission from EMI? After all, these ARE public lands that people should be allowed to reasonably access.

Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Rebecca Reynolds
402 B Metuchen Dr Monroe Township, NJ 08831-7675
reynolds846@verizon.net



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 September 3, 2021

Ms. Rebecca Reynolds
 402 B Metuchen Drive
 Monroe Township, NJ 08831
 Reynolds846@verizon.net

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Reynolds:

Thank you for comments dated October 5, 2019 and October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *Wouldn't discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities be beneficial?*

Response 2: The Draft EIS discusses options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be

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issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *How will the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather be restored? Do we really want to decimate 85% of native streamlife habitat and impact thousands of local residents by creating diversions?*

Response 3: The Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

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Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Comment 4: *Shouldn't there be a sufficient analysis of the threat and damage the diversions have caused to native aquatic species?*

Response 4: We respectfully believe that the Draft EIS sufficiently analyzes the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented

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are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *Shouldn't any plan or funding to manage the invasive species in the lower state lands they lease be included? These invasive plants and animals are hurting the health and the function of the watershed lands.*

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Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *Shouldn't an in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies be discussed?*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

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The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *Shouldn't options for more public hiking access to public lands in the proposed lease area be discussed without every hiker needing to get permission from EMI? After all, these ARE public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the "Modified Lease Area" alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

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Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.*

Response 8: With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito

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habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: rtbooth6@everyactioncustom.com on behalf of [Richard Booth](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:34:38 PM

Dear Mr. Matsukawa,

I strongly oppose Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you.

Sincerely,
Richard Booth
26250 Dreschfield Ave Grosse Ile, MI 48138-1601
rtbooth6@yahoo.com



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Mr. Richard Booth
26250 Dreschfield Avenue
Grosse Ile, MI 48138
Rtbooth6@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Booth:

Thank you for comments dated October 2, 2019 and November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I strongly oppose Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: coloneledamvc@everyactioncustom.com on behalf of [Richard Kite](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 8:44:52 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Richard Kite
101 Park Ave New York, NY 10178-0002
coloneledamvc@aol.com

From: coloneledamvc@everyactioncustom.com on behalf of [Richard Kite](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 11:27:49 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Richard Kite
1010 Massachusetts Ave NW Washington, DC 20001-5401
coloneledamvc@aol.com



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September 3, 2021

Mr. Richard Kite
1010 Massachusetts Avenue NW
Washington, DC 20001
coloneledamvc@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Kite:

Thank you for comments dated October 2, 2019 and November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: rikmasterson@everyactioncustom.com on behalf of [Rik Masterson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:18:12 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Rik Masterson
PO Box 1610 Honokaa, HI 96727-1610
rikmasterson@hotmail.com

From: rikmasterson@everyactioncustom.com on behalf of [Rik Masterson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 5:56:02 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Rik Masterson
PO Box 1610 Honokaa, HI 96727-1610
rikmasterson@hotmail.com

From: rikmasterson@everyactioncustom.com on behalf of [Rik Masterson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 5:36:02 PM

Dear Mr. Matsukawa,

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Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Rik Masterson
Hilo, HI 96720
rikmasterson@hotmail.com



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CORPORATION
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September 3, 2021

Mr. Rik Masterson
rikmasterson@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Masterson:

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: rvcanada@everyactioncustom.com on behalf of [Riley Canada II](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 1:44:55 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Riley Canada II
2865 Carnegie Way SW Marietta, GA 30064-4091
rvcanada@bellsouth.net



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Riley Canada II
2865 Carnegie Way SW
Marietta, GA 30064
rvcanada@bellsouth.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Riley Canada II:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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A&B / EMI, Applicant

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From: robq68@everyactioncustom.com on behalf of [Robert Quartero](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 5:28:16 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,

Robert Quartero

Sincerely,
Robert Quartero
204 San Antonio Ave Honolulu, HI 96813-7710
robq68@gmail.com



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Robert Quartero
204 San Antonio Avenue
Honolulu, HI 96813
Robq68@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Quartero:

Thank you for comments dated October 8, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: jrobinv1932@everyactioncustom.com on behalf of [Robin Voorhies](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 12:21:49 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Robin Voorhies
6171 Olohena Rd Kapaa, HI 96746-8704
jrobinv1932@msn.com



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10238-04
September 3, 2021

Robin Voorhies
6171 Olohena Road
Kapaa, HI 96746
Jrobinv1932@msn.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Robin Voorhies:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: bogin@everyactioncustom.com on behalf of [Ronald Bogin](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 5:41:20 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Ronald Bogin
2605 Edwards Ave El Cerrito, CA 94530-1424
bogin@sbcglobal.net



10238-04
September 3, 2021

Mr. Ronald Bogin
2605 Edwards Avenue
El Cerrito, CA 94530
bogin@sbcglobal.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Bogin:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Mr. Ronald Bogin

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: pratt.ronni@everyactioncustom.com on behalf of [Ronni Pratt](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 22, 2019 8:30:02 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Ronni Pratt
45 -735 Wainana St Kaneohe, HI 96744-2843
pratt.ronni@yahoo.com



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INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Ronni Pratt
45-735 Wainana Street
Kaneohe, HI 96744
Pratt.ronni@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Pratt:

Thank you for comments dated October 22, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Mr. Ronni Pratt
Page 2
September 3, 2021

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Letter to Mr. Ronni Pratt
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Sincerely,



Keola Cheng
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cc: Suzanne Case, Chair, Department of Land and Natural Resources
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From: snam5370@everyactioncustom.com on behalf of [S.Nam](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 8:29:42 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
S. Nam
New York, NY 10040
snam5370@ymail.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

S. Nam
Snam5370@ymail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear S. Nam:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: sremilien@everyactioncustom.com on behalf of [Sandra Remilien](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 7:26:37 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition.". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Sandra Remilien
30 NE 132nd St North Miami, FL 33161-4532
sremilien@outlook.com

From: sremilien@everyactioncustom.com on behalf of [Sandra Remilien](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 21, 2019 4:52:48 AM

Dear Mr. Matsukawa,

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Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Sandra Remilien
30 NE 132nd St North Miami, FL 33161-4532
sremilien@outlook.com



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Ms. Sandra Remilien
30 NE 132nd Street
North Miami, FL 33161
sremilien@outlook.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Remilien:

Thank you for comments dated October 3, 2019 and October 21, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

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The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly

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identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

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Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSheP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action

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alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of

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developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

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Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the

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Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poeciliid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poeciliid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poeciliid

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fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poeciliid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: sarahnaone@everyactioncustom.com on behalf of [Sarah Naone](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 12, 2019 11:27:58 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Sarah Naone
2170 W Vineyard St Wailuku, HI 96793-1669
sarahnaone@gmail.com



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CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Ms. Sarah Naone
2170 W. Vineyard Street
Wailuku, HI 96793
sarahnaone@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Naone:

Thank you for comments dated October 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: sgajate@everyactioncustom.com on behalf of [Serafina Gajate](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 12, 2019 5:50:36 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Serafina Gajate
Volcano, HI 96785
sgajate@yahoo.com



10238-04
September 3, 2021

Ms. Serafina Gajate
sgajate@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Gajate:

Thank you for comments dated October 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: shannonmkay7@everyactioncustom.com on behalf of [Shannon Keifner](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 8:24:22 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Shannon Keifner
22254 Marilla St Chatsworth, CA 91311-4745
shannonmkay7@yahoo.com



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September 3, 2021

Shannon Keifner
22254 Marilla Street
Chatsworth, CA 91311
Shannonmkay7@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Shannon Keifner:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: shawn_shafer@everyactioncustom.com on behalf of [Shawn Shafer](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 7:29:29 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Shawn Shafer
12682 Portada Pl San Diego, CA 92130-2209
shawn_shafer@yahoo.com



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 CORPORATION
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 September 3, 2021

Mr. Shawn Shafer
 12682 Portada Place
 San Diego, CA 92130
 Shawn_shafer@yahoo.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Shafer:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: davidsher@everyactioncustom.com on behalf of [Sherry Pollack](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 6:27:24 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Sherry Pollack
47 -185A HUI AKEPA PI Kaneohe, HI 96744
davidsher@juno.com



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10238-04
September 3, 2021

Ms. Sherry Pollack
47-185A Hui Akepa Place
Kaneohe, HI 96744
davidsher@juno.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Pollack:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: shyboeche@everyactioncustom.com on behalf of [Shyla Boeche](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 5:58:42 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Shyla Boeche
Hana, HI 96713
shyboeche@gmail.com



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10238-04
September 3, 2021

Ms. Shyla Boeche
shyboeche@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Boeche:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Keola Cheng
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A&B / EMI, Applicant

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From: smjx2015@everyactioncustom.com on behalf of [Sophia Janssen](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 29, 2019 6:56:49 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Sophia Janssen
807 Clayton St San Francisco, CA 94117-4423
smjx2015@mymail.pomona.edu



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10238-04

September 3, 2021

Ms. Sophia Janssen
 807 Clayton Street
 San Francisco, CA 94117
 Smjx2015@mymail.pomona.edu

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Sophia Janssen:

Thank you for comments dated October 29, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: Sparky8pez@everyactioncustom.com on behalf of [Stacey Jones](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 9:30:27 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Stacey Jones
2658 W Willow St Stockton, CA 95203-1124
Sparky8pez@gmail.com



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10238-04
September 3, 2021

Stacey Jones
2658 W. Willow Street
Stockton, CA 95203
Sparky8pez@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Stacey Jones:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: Kuailani@everyactioncustom.com on behalf of [Steven Kuailani](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 15, 2019 6:58:09 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Steven Kuailani
Wailuku, HI 96793
Kuailani@gmail.com



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10238-04
September 3, 2021

Mr. Steven Kuailani
kuailani@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Kuailani:

Thank you for comments dated October 15, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Mr. Steven Kuailani

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: wiggers@everyactioncustom.com on behalf of [Stewart Wiggers](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 9:13:08 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Stewart Wiggers
419 A Atkinson Dr Apt 708 Honolulu, HI 96814-4712
wiggers@hawaii.edu



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CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Mr. Stewart Wiggers
419 A Atkinson Drive, Apt. 708
Honolulu, HI 96814
wiggers@hawaii.edu

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Wiggers:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Mr. Stewart Wiggers

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: philad49@everyactioncustom.com on behalf of [Susan Babbitt](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 12:55:46 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Susan Babbitt
319 S 10th St Apt 133 Philadelphia, PA 19107-6146
philad49@att.net

From: philad49@everyactioncustom.com on behalf of [Susan Babbitt](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 12:04:08 AM

Dear Mr. Matsukawa,

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319 S 10th St Apt 133 Philadelphia, PA 19107-6146
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10238-04
 September 3, 2021

Ms. Susan Babbitt
 319 S 10th St Apt 133
 Philadelphia, PA 19107-6146
 philad49@att.net

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Babbitt:

Thank you for comments dated October 3, 2019 and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Sincerely,



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cc: Suzanne Case, Chair, Department of Land and Natural Resources
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From: susanhead1@everyactioncustom.com on behalf of [Susan Head](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 12:36:33 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Susan Head
535 Spring St Sausalito, CA 94965-1723
susanhead1@hotmail.com



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10238-04
September 3, 2021

Susan Head
535 Spring St
Sausalito, CA 94965-1723
susanhead1@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Head:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: slstorch@everyactioncustom.com on behalf of [Susan Storch](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 12:32:33 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Susan Storch
155 Church Pond Saranac Lake, NY 12983-3203
slstorch@mac.com



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10238-04
September 3, 2021

Ms. Susan Storch
155 Church Pond
Saranac Lake, NY 12983-3203
slstorch@mac.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Storch:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: sylvia_lion@everyactioncustom.com on behalf of [Sylvia Rodriguez](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 5:14:24 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Sylvia Rodriguez
227 E 5th St Apt 3FW New York, NY 10003-8556
sylvia_lion@yahoo.com



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10238-04
September 3, 2021

Ms. Sylvia Rodriguez
227 E 5th St Apt 3FW
New York, NY 10003-8556
sylvia_lion@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Rodriguez:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: tammylettieri@everyactioncustom.com on behalf of [Tammy Lettieri](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:18:47 PM

Dear Mr. Matsukawa,

I submit my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Tammy Lettieri
3302 Carambola Cir S Coconut Creek, FL 33066-2147
tammylettieri@aol.com



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10238-04

September 3, 2021

Ms. Tammy Lettieri
3302 Carambola Cir S
Coconut Creek, FL 33066-2147
tammylettieri@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Lettieri:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: tmi_darktower@everyactioncustom.com on behalf of [Teresa Iovino](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, November 4, 2019 8:35:38 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Teresa Iovino
2206 Cornwall St Germantown, TN 38138-4628
tmi_darktower@yahoo.com



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10238-04
September 3, 2021

Ms. Teresa Iovino
2206 Cornwall St
Germantown, TN 38138-4628
tmi_darktower@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Iovino:

Thank you for comments dated November 4, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Ms. Teresa Iovino

Page 2

September 3, 2021

The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: yarddawg_1@everyactioncustom.com on behalf of [Terrie Williams](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 2:31:53 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Terrie Williams
850 Laura Ln Vidor, TX 77662-6311
yarddawg_1@att.net

From: yarddawg_1@everyactioncustom.com on behalf of [Terrie Williams](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 4:08:07 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Terrie Williams
850 Laura Ln Vidor, TX 77662-6311
yarddawg_1@att.net

From: yarddawg_1@everyactioncustom.com on behalf of [Terrie Williams](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 5:17:33 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Terrie Williams
850 Laura Ln Vidor, TX 77662-6311
yarddawg_1@att.net



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Terrie Williams
850 Laura Ln
Vidor, TX 77662-6311
yarddawg_1@att.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Terrie Williams:

Thank you for comments dated October 3, 2019, October 9, 2019, and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that

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were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the

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MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS,

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draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft

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EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

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Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the

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remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority

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to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

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Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawī NAR. It is unlikely that the removal of the Hanawī NAR from the License

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Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have

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continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: terrydeegan@everyactioncustom.com on behalf of [Terry Deegan](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 5, 2019 5:12:01 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Maui is a treasure that I love, having visited many times since the early 80s and compelled to help protect.

-The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

-The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

-The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

-The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease.

These invasive plants and animals are hurting the health and the function of the watershed lands.

-The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

-The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

-The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.

Diverting streams is bad environmental policy and bad business.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,

Terry Deegan

3145 Estates Pl N Saint Joseph, MI 49085-3434

terrydeegan@aol.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Terry Deegan
3145 Estates Pl N
Saint Joseph, MI 49085-3434
terrydeegan@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Terry Deegan:

Thank you for comments dated October 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Maui is a treasure that I love, having visited many times since the early 80s and compelled to help protect.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

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The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly

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identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

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Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not

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an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years.

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Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the Final EIS to better identify the recreational resources in the vicinity

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of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on pages 1-2, and pages 3-22 of the Final EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in

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increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that

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anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: ttedesco49@everyactioncustom.com on behalf of [Terry Tedesco](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:42:08 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Terry Tedesco
3042 E Squaw Peak Cir Phoenix, AZ 85016-8924
ttedesco49@cox.net



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September 3, 2021

Terry Tedesco
3042 E Squaw Peak Cir
Phoenix, AZ 85016-8924
ttedesco49@cox.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Terry Tedesco:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: buddhabear88@everyactioncustom.com on behalf of [Therese DeBing](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 12:24:09 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Therese DeBing
935 Lighthouse Ave Apt 14 Pacific Grove, CA 93950-2450
buddhabear88@hotmail.com



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10238-04
September 3, 2021

Ms. Therese DeBing
935 Lighthouse Ave Apt 14
Pacific Grove, CA 93950-2450
buddhabear88@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. DeBing:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: tia.pearson@everyactioncustom.com on behalf of [Tia Pearson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 8:56:53 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Tia Pearson
PO Box 861697 Wahiawa, HI 96786-8563
tia.pearson@gmail.com



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10238-04
September 3, 2021

Tia Pearson
PO Box 861697
Wahiawa, HI 96786-8563
tia.pearson@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Pearson:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: gabbystf@everyactioncustom.com on behalf of [Tiffany Haverfield](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 6:36:40 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Tiffany Haverfield
21 Beacon St Apt 3Q Boston, MA 02108-2805
gabbystf@hotmail.com



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10238-04
 September 3, 2021

Tiffany Haverfield
 21 Beacon St Apt 3Q
 Boston, MA 02108-2805
 gabbystf@hotmail.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Haverfield:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: tracyjouellette@everyactioncustom.com on behalf of [Tracy Ouellette](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 5, 2019 5:29:59 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Tracy Ouellette
14078 Mactaggart Ave Bow, WA 98232-9246
tracyjouellette@gmail.com



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September 3, 2021

Tracy Ouellette
14078 Mactaggart Ave
Bow, WA 98232-9246
tracyjouellette@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Tracy Ouellette:

Thank you for comments dated October 5, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: vsanfi@everyactioncustom.com on behalf of [Val Sanfilippo](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 8:51:39 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Val Sanfilippo
3246 Ashford St San Diego, CA 92111-5057
vsanfi@gmail.com



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September 3, 2021

Val Sanfilippo
3246 Ashford St
San Diego, CA 92111-5057
vsanfi@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Val Sanfilippo:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: vanessainhawaii@everyactioncustom.com on behalf of [Vanessa Baggs](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 10:33:43 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Vanessa Baggs
25 Haaheo Pl Makawao, HI 96768-8511
vanessainhawaii@gmail.com



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September 3, 2021

Ms. Vanessa Baggs
25 Haaheo Pl
Makawao, HI 96768-8511
vanessainhawaii@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Baggs:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Letter to Ms. Vanessa Baggs

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: aussiedogweb@everyactioncustom.com on behalf of [vernon batty](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 3:32:28 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.

The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East maui residents over the years.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
vernon batty
1160 Majestic Dr Pagosa Springs, CO 81147-7018
aussiedogweb@gmail.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Vernon Batty
1160 Majestic Dr
Pagosa Springs, CO 81147-7018
aussiedogweb@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Batty:

Thank you for comments dated October, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

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The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native stream life habitat and impact thousands of local residents.*

Response 3: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly

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identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

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Comment 4: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSheP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action

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alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 5: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

Comment 6: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 6: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of

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developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 7: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

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Response 7: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the

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Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 8: *The DEIS doesn't talk about the role diverted streams have on mosquito populations in East Maui. Stagnant pools along diverted streams were breeding grounds for mosquitoes that carried Dengue fever virus to East Maui residents over the years.*

Response 8: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poeciliid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poeciliid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poeciliid

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fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: menehune420@everyactioncustom.com on behalf of [Vince Saures](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 13, 2019 4:47:33 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Vince Saures
2300 Lihi Pali Ave Hoolehua, HI 96729
menehune420@gmail.com

From: menehune420@everyactioncustom.com on behalf of [Vince Saures](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 10:52:52 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Vince Saures
195 Iliahi St Kaunakakai, HI 96748
menehune420@gmail.com



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

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Mr. Vince Saures
2300 Lihi Pali Ave
Hoolehua, HI 96729
mehune420@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Saures:

Thank you for comments dated October 13, 2019 and November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: wendyjoakes@everyactioncustom.com on behalf of [Wendy Oakes](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 11:41:59 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Wendy Oakes
1868 Page St San Francisco, CA 94117-1931
wendyjoakes@aol.com



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10238-04
September 3, 2021

Ms. Wendy Oakes
1868 Page St
San Francisco, CA 94117-1931
wendyjoakes@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Oakes:

Thank you for comments dated November, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: hanakauhi@everyactioncustom.com on behalf of [William Church](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, November 7, 2019 11:28:56 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
William Church
265 Alalele Pl Hana, HI 96713
hanakauhi@msn.com



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10238-04
September 3, 2021

Mr. William Church
265 Alalele Pl Hana, HI 96713
hanakauhi@msn.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Church:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: yceliz@everyactioncustom.com on behalf of [Yvette Celiz](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, November 7, 2019 9:59:21 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Yvette Celiz
868 Niheu St Lahaina, HI 96761-2153
yceliz@outlook.com



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10238-04
September 3, 2021

Ms. Yvette Celiz
868 Niheu St
Lahaina, HI 96761-2153
yceliz@outlook.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Celiz:

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Comment 2: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 2: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

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Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-63 to 4-67 of the Final EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 3: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 3: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-

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36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see on pages 3-49 to 3-80, noted in Response #2 above, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 4: *The DEIS should discuss options for more public hiking access to public lands in the proposed lease area without every hiker needed to get permission from EMI. These are public lands that people should be allowed to reasonably access.*

Response 4: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown in pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and

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more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown in pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased

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impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: alan81435@everyactioncustom.com on behalf of [Alan Bradbury](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 6:34:05 PM

Dear Mr. Matsukawa,

Friends,

As a resident of East Maui I would like to see minimum stream flow standard set for all streams. Dry stream beds breed mosquitos in stagnate standing water. One can also feel the difference when the streams are flowing, when it is as it should be. The land out here is alive. That is until entire stream flows are diverted. With proper planning, crop choices, additional storage and conservative use, there should be enough water for both living streams and agriculture. Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Alan Bradbury
10600 Hana Hwy Haiku, HI 96708-5790
alan81435@gmail.com



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Alan Bradbury
10600 Hana Hwy
Haiku, HI 96708-5790
alan81435@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Bradbury:

Thank you for comments dated October 10, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *As a resident of East Maui I would like to see minimum stream flow standard set for all streams. Dry stream beds breed mosquitos in stagnate standing water.*

Response 1: With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased

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streamflow. First, in addition to breeding in streams, the *Culex* mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the *Culex* mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for *Culex* mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the *Culex* mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of *Culex* mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i

Comment 2: *One can also feel the difference when the streams are flowing, when it is as it should be. The land out here is alive. That is until entire stream flows are diverted.*

Response 2: We acknowledge your comments. Please note that the environmental impacts of the potential Water Lease are discussed throughout Chapter 4 of the EIS.

Comment 3: *With proper planning, crop choices, additional storage and conservative use, there should be enough water for both living streams and agriculture.*

Response 3: We acknowledge your comments. The CWRM D&O was issued in June 2018 and included the A&B diversified agriculture plan. Mahi Pono did not purchase the Central Maui agricultural fields from A&B until December 2018, which was after the issuance of the CWRM D&O. The Mahi Pono farm plan is not anticipated to have a decrease in water demand over the years, though at full build-out, it will require significantly less water than utilized when sugarcane was cultivated on these same lands. So while there is a total decrease in water demand over historical sugar operations, as with any new and growing farm operation, the water demand of the Mahi Pono farm plan is expected to increase over the years until full build-out. Moreover, if more water were to become available in the future, Mahi Pono intends to plant additional crops

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in areas that are currently planned to be unirrigated pasture due to the lack of enough water to fully irrigate all 30,000 acres of land.

Comment 4: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 4: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian

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right (CWRM D&O, COL 131). Various streams within the License Area have low biological ratings and do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: guerillawordfare@everyactioncustom.com on behalf of [Aleks Kosowicz](#)
To: [Public Comment](#)
Subject: RE: Alexander and Baldwin's Draft EIS
Date: Thursday, October 3, 2019 2:33:12 PM

Dear Mr. Matsukawa,

As I consider the DEIS insufficient, both in terms of threat and damage analysis and invasive species management, I am writing to urge serious revision. I am writing in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for the opportunity to submit comments on this Draft EIS and for doing all you can to encourage the proper stewardship of this region.

Sincerely,
Aleks Kosowicz
12876 N Balsam Rd Hayward, WI 54843-4093
guerillawordfare@yahoo.com

From: guerillawordfare@everyactioncustom.com on behalf of [Aleks Kosowicz](#)
To: [Public Comment](#)
Subject: Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 8:03:07 PM

Dear Mr. Matsukawa,

I am very concerned by the state of our natural world, and I ask that you please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Aleks Kosowicz
12876 N Balsam Rd Hayward, WI 54843-4093
guerillawordfare@yahoo.com



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Aleks Kosowicz
12876 N Balsam Rd
Hayward, WI 54843-4093
guerillawordfare@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Aleks Kosowicz:

Thank you for comments dated October 3, 2019 and October 8, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

October 3, 2019:

Comment 1: *As I consider the DEIS insufficient, both in terms of threat and damage analysis and invasive species management, I am writing to urge serious revision.*

Response 1: We respectfully disagree with your comment that the Draft EIS is insufficient. Please note that the Draft EIS fully complied with all relevant requirements, including the content requirements set forth in §11-200-16 and 11-200-17, and the Draft EIS even includes a content checklist directing the reader to the specific sections of the Draft EIS addressing each content requirement. The Draft EIS meets the necessary content requirements and for that reason we disagree with your comment that the Draft EIS does not disclose sufficient information about the anticipated impacts of the Proposed Action, alternatives to the Proposed Action, and feasible measures that might be taken to mitigate potential impacts, sufficient to allow informed decision making.

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With regards to invasive species management, it is noted in Appendix C that that low-elevation portions of the License Area are already highly impacted by invasive plants. However, it is noted in Appendix C that high-elevation portions of the License Area are predominately dominated by native species and is very likely to contain habitat for several endangered or threatened species. Impacts related to flora and fauna as a result of the Proposed Action are discussed in Section 4.4 of the EIS. Please note that Section 4.4.1 and Section 4.4.2 have been revised in the Final EIS based on comments received on the Draft EIS to further outline the existing conditions of the License Area and more accurately reflect targeted mitigation measures based on feedback provided by the DLNR and USFWS. See pages 4-121 to 4-124. Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

As discussed in Section 2.1 of the Draft EIS, A&B was a founding member of the East Maui Watershed Partnership (EMWP), which was the first watershed partnership in the State of Hawai'i and which served as a model for other watershed partnerships throughout the State. The lands under the jurisdiction of the East Maui Watershed Partnership span over 100,000 acres which includes the entire License Area. The License Area is actively managed by the multiple agencies and organizations, including EMWP, Maui Invasive Species Committee (MISC), DLNR, etc., in partnership with EMI. EMI continues to work with MISC by reporting sighting of invasive weeds and coordinating access in these areas, which are well below the 3,000' level. EMI personnel also monitor the License Area for signs of feral ungulates.

Comment 2: *I am writing in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

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Response 2: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that

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are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 3: *Thank you for the opportunity to submit comments on this Draft EIS and for doing all you can to encourage the proper stewardship of this region.*

Response 3: We acknowledge your comments. With regards to your comment about proper stewardship, please note as discussed in Response #1 above, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as

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Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the Final EIS as shown on pages 2-2 to 2-4.

October 8, 2019:

Comment 4: *I am very concerned by the state of our natural world, and I ask that you please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 4: As discussed in Response #2 above, please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important

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Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: mauiamy@everyactioncustom.com on behalf of [Amy Chant](#)
To: [Public Comment](#)
Subject: Comments Mahi Pono /Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 12:55:11 PM

Dear Mr. Matsukawa,

Aloha! Thank you for your time because this is such an important issue. I live and swim alongside several streams in Huelo. No more diversions please! It is so horrible when the beds are dry and stagnant. What a travesty that happened in Wailuku River where all the thousands of fish died.

Also I heard that Mahi Poni uses roundup to spray near the rivers to control weeds? Is this true? Monsanto which just sold to Bayer lost several millions of dollar lawsuits because it is a proven this is a dangerous substance. This should concern all of us, since many family and friends swim in the waters. Our streams should not be diverted for any kind of agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. I heard they are growing almonds which take huge amounts of water, what is the gallons per nut ratio? Please print. We need small farms growing real food, but more we need our river alive with fish and for Kalo.

Mahalo, for this opportunity to submit comments on this Draft EIS. Sincerely, Miss Amy Chang and Parents

Sincerely,
Amy Chant
64 Door Of Faith Rd Haiku, HI 96708-5716
mauiamy@yahoo.com



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Amy Chant
64 Door of Faith Rd.
Haiku, HI 96708-5716
mauiamy@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Chang:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules, Title 11, Chapter 200, Section 18. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Aloha! Thank you for your time because this is such an important issue. I live and swim alongside several streams in Huelo. No more diversions please !*

It is so horrible when the beds are dry and stagnant. What a travesty that happened in Wailuku Roger where all the thousands of fish died.

Response 1: We acknowledge your comments and understand that you are a resident in Huelo. Regarding your comments about stream bed being dry and stagnant, impacts to stream flow and stream life as a result of diversions were assessed in the Draft EIS Section 4.2.1. The HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to help decision-makers determine an appropriate balance between instream and offstream water uses. The mauka to maikai connection is integral to the design of the HSHEP model in estimating the impacts of stream diversions on native species habitat. Impacts to stream habitats and native amphidromous stream species, are analyzed in Section 4.2.1 and Appendix A of the EIS.

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Moreover, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-61.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Comment 2: *Also I heard that Mahi Poni uses roundup to spray near the rivers to control weeds? Is this true? Monsanto Which just sold to Bauer lost several millions of dollar lawsuits because it is a Proven this is a dangerous Substance. This should concern all of us, since many family and friends swim in the waters.*

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Response 2: Regarding your comment about pesticide use, as discussed in Section 4.12 pesticide use is regulated by both State and Federal law. The use of these chemicals is compliant with all laws regulating pesticide use, and certified commercial applicators are utilized as required. Act 45 which was passed by the 2018 Hawai'i Legislature and effective on January 1, 2019 required that all Certified Applicators of Restricted Use Pesticides (RUP) submit a report of the RUP that were applied each year. This report as well as any other report required by law is publicly available from the respective government entity. The State of Hawai'i DOA's Pesticide Branch also provides regulatory oversight over EMI's pesticide use. In accordance with this oversight, records of pesticide use must be kept and made available to the Pesticide Branch upon request at any time. It is also noted that since January 2020 EMI committed to discontinuing use of Round-Up. This information has been included in the Final EIS as shown on page 4-271.

Comment 3: *Our streams should not be diverted for any kind of agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 3: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 4: *I heard they are growing almonds which take huge amounts of water, what is the gallons per nut ratio? Please print. We need small farms growing real food, but more we need our river Alive with fish and for Kalo.*

Response 4: Please note that the Mahi Pono farm plan is discussed in detail in Section 2.1.4 of the Draft EIS. Specifically, Section 2.1.4 of the Draft EIS states:

- *That total amount of water will be delivered to approximately 30,000 acres. Of those 30,000 acres:*
 - *Approximately 15,950 acres would be used for farming, including 12,850 acres for orchard crops and 3,100 acres for other crops.*
 - *Approximately 13,800 acres would be used for pasture, of which about 4,700 acres would be irrigated.*
 - *Approximately 250 acres would be used for green energy, such as a solar farm.*

Moreover, Table 2-1 of the Draft EIS (Table 2-2 in the Final EIS) provide daily water demands for each crop category. With regards to your question, please note that Mahi Pono intends to grow mac nuts, not almonds.

With regards to your comment about fish, as noted in Response #1 above, impacts to stream flow and stream life as a result of diversions were assessed in the Draft EIS Section 4.2.1. The HSHEP model was used to quantify the impacts of flow restoration on native stream animal habitat to help decision-makers determine an appropriate balance between instream and offstream water uses. The mauka to maikai connection is integral to the design of the HSHEP model in estimating the impacts of stream diversions on native species habitat. Impacts to stream habitats and native amphidromous stream species, are analyzed in Section 4.2.1 and Appendix A of the EIS.

With regards to coastal environments, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls

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and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 along with their overlap with streams determined with the method used by Trutta as shown on page 4-83 of the Final EIS. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the

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HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-56 to 4-67.

With regards to kalo farming, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified

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through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu‘u, Ka‘aiea, ‘O‘opuola, Puehu, Nāili‘ilihaele, Kailua, Hanahana, Hoalua, Waipi‘o, Mokupapa and Ho‘olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on pages 1-13 to 1-24. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe‘e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo‘i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

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Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 5: *Mahalo, for this opportunity to submit comments on this Draft EIS. Sincerely, Miss Amy Chang and Parents*

Response 5: We acknowledge your comments. Please note that we provided you with detailed responses to your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: angleahuntemer@everyactioncustom.com on behalf of [Angela Huntemer](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 12:42:46 PM

Dear Mr. Matsukawa,

I am completely opposed to Alexander and Baldwin's proposal to further divert the streams of East Maui. The answer is NO! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. This goes for all of our streams. They have been destroyed, diverted and dried. It is a disgrace that private companies are allowed to take water from our threatened and endangered aquatic flora and fauna.

Thank you for this opportunity to submit comments on this Draft EIS.

Angela Huntemer Sidrane
57-068 Eleku Kuilima Place
#136
Kahuku HI 96731

Sincerely,
Angela Huntemer
57 -068 Eleku Kuilima Pl Apt 136 Kahuku, HI 96731-2140
angleahuntemer@gmail.com



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September 3, 2021

Angela Huntemer
57 -068 Eleku Kuilima Pl Apt 136,
Kahuku, HI 96731-2140
angleahuntemer@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Huntemer:

Thank you for comments dated October 10, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Comment 1: *I am completely opposed to Alexander and Baldwin’s proposal to further divert the streams of East Maui. The answer is NO! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new,

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *This goes for all of our streams. They have been destroyed, diverted and dried. It is a disgrace that private companies are allowed to take water from our threatened and endangered aquatic flora and fauna.*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 2: Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all

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diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: annalea.fink@everyactioncustom.com on behalf of [Annalea Fink](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, November 7, 2019 9:14:34 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Continued diversion of streams in East Maui will continue to deplete the water table/aquifer, which has long-lasting and domino-effect issues on the flora and fauna of all East Maui. We do not know what healthy looks like because it has been so long since "normal" flow has been allowed and documented. In such uncertain times due to the effects of climate change, do not divert East Maui streams.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Annalea Fink
Hana, HI 96713
annalea.fink@gmail.com



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September 3, 2021

Annalea Fink
Hana, HI 96713
annalea.fink@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Annalea Fink:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *Continued diversion of streams in East Maui will continue to deplete the water table/aquifer, which has long-lasting and domino-effect issues on the flora and fauna of all East Maui. We do not know what healthy looks like because it has been so long since “normal” flow has been allowed and documented. In such uncertain times due to the effects of climate change, do not divert East Maui streams.*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 2: With regards to your comments about depleting the water table/aquifer, please note that a 2019 United States Geological Survey (USGS) report titled, “Estimated Groundwater Recharge from a Water-Budget Model Incorporating Selected Climate Projections, Island of Maui, Hawai‘i” identifies certain aquifer sectors and aquifer systems that will experience either increases or decreases due to climate projections. In the scenarios presented in the USGS report, the aquifer systems in the Ko‘olau Aquifer Sector are projected to see some of the largest increases in recharge, whereas aquifer systems in the Central Aquifer Sector are projected to see decreases in recharge due to changes in rainfall patterns from future climate change trends. However, please note that under the Proposed Action, surface water is diverted from the East Maui License Area (which lies largely over the Ke‘anae, Waikamoi and Honopou aquifers in the Ko‘olau Aquifer Sector (See EIS Figure 4-17), to the Central Maui agricultural fields, which largely lie over the Pā‘ia Aquifer in the Central Aquifer Sector (See EIS Figure 4-18). As detailed in Section 4.2.2 of the EIS, the groundwater pumpage within the Ko‘olau Aquifer Sector is far below the Sustainable Yield (SY). This section of the EIS also addresses the anticipated impacts to the Central Aquifer Sector from the conveyance of East Maui surface water to Central Maui for irrigation purposes. Section 4.2.2 of the EIS has been updated to reflect your comment regarding the USGS report, as shown on pages 4-71 to 4-76.

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With regards to flora and fauna impacts, Appendix C of the Draft EIS specifically addresses the flora and fauna considerations of the Proposed Action and alternatives. To minimize the impacts to flora and fauna in the License Area, Section 7 of Appendix C identifies several avoidance and minimization measures, including measures to avoid the introduction of additional invasive species to the License Area, which is harmful to the watershed and to native flora which are also reflected in Section 4.4 of the EIS.

Regarding your comment about not knowing what ‘healthy’ looks like, although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe‘e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals’ habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the

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Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-332 to 4-335.

With regards to your comment about climate change, this is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts towards adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on pages 4-89 to 4-94 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: kanoeflores@everyactioncustom.com on behalf of [Ariana Flores](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 17, 2019 10:11:44 PM

Dear Mr. Matsukawa,

You're not fooling our generation, the water belongs to the land. It is not for profit. NO MORE STREAM DIVERSIONS.

MY CHILDREN ARE THE FUTURE OF THIS ISLAND.

80% of homeowners in my new subdivision are from the continental US. I see their license plate when they move here, I know what local is. Locals and multigenerational families are not the ones purchasing new homes. We do not need more new homes.

I am a multigenerational Hawaiian, and we want water and land.

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Ariana Flores
36 Kihalani Loop Unit 504 Kihei, HI 96753-7687
kanoeflores@gmail.com



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Ariana Flores
 36 Kihalani Loop Unit 504
 Kihei, HI 96753-7687
 kanoeflores@gmail.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Flores:

Thank you for comments dated October 17, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *You’re not fooling our generation, the water belongs to the land. It is not for profit. NO MORE STREAM DIVERSIONS.*

MY CHILDREN ARE THE FUTURE OF THIS ISLAND.

80% of homeowners in my new subdivision are from the continental US. I see their license plate when they move here, I know what local is. Locals and multigenerational families are not the ones purchasing new homes. We do not need more new homes.

I am a multigenerational Hawaiian, and we want water and land.

Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai

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Response 1: We acknowledge your comments and understand that you are a multigenerational Hawaiian that is opposed to the Water Lease. With regards to your comment about new homes, please note that the Proposed Action does not entail the development of new homes. The EIS was prepared to support the application for the issuance of a long-term Water Lease for the purpose of developing, diverting, and transporting the use of the State's East Maui waters through the EMI Aqueduct System for the uses described in the EIS.

Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: arnoldkotler@everyactioncustom.com on behalf of [Arnie Kotler](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 8:28:03 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. I totally support the intentions of Mahi Pono, and of course they'll need a good flow of water to create diversified agriculture on Maui. But 35,000 gpd needs to be justified with very specific studies that take into account competing needs for the same water, both practical and cultural.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Arnie Kotler
PO Box 822 Kihei, HI 96753-0822
arnoldkotler@aol.com



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Arnie Kotler
PO Box 822
Kihei, HI 96753-0822
arnoldkotler@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Kotler:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *I totally support the intentions of Mahi Pono, and of course they'll need a good flow of water to create diversified agriculture on Maui. But 35,000 gpd needs to be justified with very specific studies that take into account competing needs for the same water, both practical and cultural.*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 2: We acknowledge your comments. Your comment about '35,000 gpd' is unclear as nowhere in the EIS is that stated. Please note that under the Proposed Action, as discussed in Section 2.1.2 of the Draft EIS, that an estimated 87.95 mgd will be diverted from the License Area, and an additional 4.37 mgd between Honopou Stream and Māliko Gulch will be diverted, for a total of 92.32 mgd for uses described in the EIS. With regards to daily crop demands, this is justified by Table 2-1 in the Draft EIS (Table 2-2 in the Final EIS) which depicts the Mahi Pono farm plan in Section 2.1.4.

With regards to your comment about specific studies as it relates to cultural impacts, Section 4.6 of the Draft EIS, which summarized the Cultural Impact Assessment (CIA) (Appendix F) describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail);

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Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the

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Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, pages 4-158 to 4-159. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the

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Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: brianjburdt@everyactioncustom.com on behalf of [Brian Burdt](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 4:22:29 PM

Dear Mr. Matsukawa,

Thank you for taking the time to read my comments. I am in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. A&B shouldn't be diverting any water as they no longer grow anything other than future subdivisions and more overcrowding. East Maui streams should not be diverted for agriculture.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Brian Burdt
Haiku, HI 96708
brianjburdt@hotmail.com



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September 3, 2021

Mr. Brian Burdt
Haiku, HI 96708
brianjburdt@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Burdt:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Thank you for taking the time to read my comments. I am in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. A&B shouldn’t be diverting any water as they no longer grow anything other than future subdivisions and more overcrowding. East Maui streams should not be diverted for agriculture.*

Response 1: We acknowledge your comments and understand that you are opposed to the Proposed Action. There is no plan for the development of dwellings within the Central Maui agricultural fields now owned by Mahi Pono. The Mahi Pono farm plan sets forth Mahi Pono's plans for those lands.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program

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(formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: bkcraig.hana@everyactioncustom.com on behalf of [Brianna Craig](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, November 7, 2019 10:57:26 AM

Dear Mr. Matsukawa,

My name is Brianna Craig, and I have been a resident of East Maui for 7 years. I received by baccalaureate degree in Marine Science and Geology, with a focus on groundwater and estuarine ecosystems that are so vital for most of our coastal marine and stream life. I live in Nahiku with my fiance who was born and raised in Lower Nahiku, and his lived here all of his life, sustaining himself, our family, and community by fishing, hunting, and gathering from mauka to makai. My comments below are based on my own experiences in the short time I have lived here, as well as my partners experiences spending his entire life of 34 years here.

The draft EIS submitted, although long and extensive, is severely lacking in quantitative information.

First, the draft EIS is drastically ill-defining "baseline" flow of East Maui streams as streams WITH A&B/EMI diversions in place. Any qualified environmental consultant with the proper background and credentials to conduct this EIS research will know what base-flow is the surface water and groundwater that flows into streams in between rain events and during droughts (definition provided by USGS). This assessment of base flow can only be determined mauka (mountain-side) of the EMI diversions, and not below. Base flow below diversion infrastructure is severely interrupted, and therefore this EIS is grossly mistaken.

Second, and building off of the above facts, native aquatic stream life below the diversions have not been properly assessed in base flow conditions because the diversions squander that possibility. Any biological surveys conducted makai (ocean-side) of diversions are inadequate and grossly mistaken.

Third, although certain streams have been "restored" to 100% flow, water is still being diverted from streams. For example, the Makapipi stream in Nahiku is one of the "fully restored" streams, yet if you walk to the diversion infrastructure, you can plainly see that the culvert/flume that is meant to channel water north/west of the stream is ABOVE the floodgate. So even though the floodgate is "100% open," there is still a wall across the river that water builds up behind, and the flume is located underneath the base flow water level, so water is still being diverted into the flume. When speaking to local EMI employees about this, they use the excuse that the water is being diverted and released in the next stream over, Hanawi. Even if this is true, this disproves EMI's claim that 100% of Makapipi stream is released and flowing in a base flow condition. Even worse, when we experience heavy rainfall, a larger percentage of water is still diverted. Too many times to count, we have witnessed dry river beds in Lower Nahiku, when the water should be flowing. Stagnant pools of water persist, although water flowing above the diversion is plentiful and abundant.

This example brings me to my point that EMI should be held accountable for their false statements and definition of "released streams" by the county and state. East Maui is rural, rugged, and isolated, so EMI has gotten away with gross misconduct of water management because of the sheer lack of oversight by our public agency. We the people of East Maui entrust in the county and state agencies to protect our natural resources, so it is high-time that A&B/EMI be held accountable for their corporate-driven blatant disregard of East Maui's natural hydrologic processes, native flora and fauna, and the peoples native sustenance, ancestral, cultural, and spiritual practices within our waterways.

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless all of the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Brianna Craig
PO Box 578 Hana, HI 96713-0578
bkcraig.hana@gmail.com



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Ms. Brianna Craig
P.O. Box 578
Hana, HI 96713-0578
bkcraig.hana@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Craig:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *My name is Brianna Craig, and I have been a resident of East Maui for 7 years. I received my baccalaureate degree in Marine Science and Geology, with a focus on groundwater and estuarine ecosystems that are so vital for most of our coastal marine and stream life. I live in Nahiku with my fiance who was born and raised in Lower Nahiku, and his lived here all of his life, sustaining himself, our family, and community by fishing, hunting, and gathering from mauka to makai. My comments below are based on my own experiences in the short time I have lived here, as well as my partners experiences spending his entire life of 34 years here.*

The draft EIS submitted, although long and extensive, is severely lacking in quantitative information.

First, the draft EIS is drastically ill-defining "baseline" flow of East Maui streams as streams WITH A&B/EMI diversions in place. Any qualified environmental consultant with the proper background and credentials to conduct this EIS research will know what base-flow is the surface water and groundwater that flows into streams in between rain events and during droughts (definition provided by USGS). This assessment of base flow can only be determined mauka (mountain-side) of the EMI diversions, and not below. Base flow below diversion infrastructure is severely interrupted, and therefore this EIS is grossly mistaken.

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Response 1: We acknowledge your comments and understand that you are an East Maui resident with a degree in Marine Science and Geology.

With regards to your comments about how the Draft EIS defines the baseline flow, please note that baseflow has many definitions and many ways to calculate it. It is true that baseflow is generally considered the stable low flow that occurs between rain events but defining an exact amount of water in a stream that constitutes baseflow is not easy in practice. It can be done using field methods, hydrograph recession statistics or long-term discharge statistics and all will yield slightly different baseflow discharge results. The definition of how the EIS interprets baseflow, which is consistent with how CWRM interpreted baseflow has been made clearer in Sections 1.3.4, 2.1 and 4.2.1 of the EIS as shown on pages 1-13 to 1-24.

In preparing its study to support the EIS, Trutta Environmental Solutions (Trutta) generally followed the USGS regression statistics approach to estimate streamflow at all diversion locations based on watershed and rainfall characteristics included in the HSHEP model. The streamflow estimates are based on the regression relationships published by the USGS in:

Gingerich, S.B., 2005, Median and Low-Flow Characteristics for Streams under Natural and Diverted Conditions, Northeast Maui, Hawaii: Honolulu, HI, U.S. Geological Survey, Scientific Investigations Report 2004-5262, 72 p.

To predict the amount of water in a stream under “normal low flow conditions” (or baseflow), Trutta standardized the HSHEP discharge estimates with the USGS Base Flow Discharge 50 % exceedance statistic or BFQ₅₀. Since the HSHEP model used basin characteristics and rainfall input to predict BFQ₅₀, Trutta was able to estimate the comparable baseflow statistic consistently throughout the License Area. This provides an estimated streamflow above the many ungaged diversions and the ability to estimate baseflow return downstream of diversions. While this approach has its weaknesses, statistical models are commonly used to estimate discharge in data-poor areas for comparative use. For example, see discussion of discharge statistics and mathematical models from the CWRM Instream Flow Assessment Report for West Wailuaiki on Maui. On page 32, it states:

Mathematical models and equations are commonly used to represent hydrologic occurrences in the real world; however, they are typically based on a set of assumptions that oftentimes render their estimates questionable in terms of accuracy and precision. This does not mean the public should entirely discount the estimates produced by these mathematical tools because they do provide quantitative and qualitative relative comparisons that are useful when making management decisions.

Thus, the BFQ₅₀ statistic was used appropriately for comparative purposes in the HSHEP model results.

Regarding your comment about the need to determine baseflow on the mauka side of any diversions, rather than below, please see our responses to our next comment which also raises this issue. However, regarding whether an assessment of base flow can only be determined mauka of diversions, baseflow can be determined at any location within a stream. Whether baseflow is measured upstream or downstream of a diversion the result can be used for different applications. We use natural or “undiverted” baseflow as a

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quantity of water that accumulates in a downstream direction. Diversions would remove a portion of the baseflow quantity. That removal of baseflow would be consistently removed from all downstream baseflow estimates.

Overall, it appears that you misunderstand the use of baseflow measurements. Measuring baseflow below a diversion would be important to distinguish two separate stream conditions. One where the diversion removes 100% of flow and there is no flow recovering due to groundwater input and therefore baseflow below the diversion is 0. The other where the diversion removes 100% of flow and there is flow recovery due to groundwater input and the baseflow would be a value greater than 0. These cases addressed by measuring baseflow below a diversion would have great differences in the amount of habitat available to stream animals.

Comment 2: *Second, and building off of the above facts, native aquatic stream life below the diversions have not been properly assessed in base flow conditions because the diversions squander that possibility. Any biological surveys conducted makai (ocean-side) of diversions are inadequate and grossly mistaken.*

Response 2: Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means *"the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions."* HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been

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updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-335.

Trutta surveyed both up and downstream of diversions wherever not limited by the dangerous terrain. Generally, East Maui streams are very steep, and oftentimes prevent surveying either up- or downstream due to large waterfalls.

The comment, "*Any biological surveys conducted makai (ocean-side) of diversions are inadequate and grossly mistaken*" is not accurate. Biological surveys both upstream and downstream of diversions provide information to address different ecological questions. For example, if a species is observed immediately below a diversion, but not above the diversion, then the diversion may be acting as a barrier to upstream movement. Conversely, if a species is found above the diversion and not below, the diversion may be eliminating habitat downstream of the diversion.

As far as the surveys in East Maui stream being inadequate, in addition to the surveys completed for the Proposed Action Dr. James Parham (preparer of Appendix A of the EIS) co-authored the results of 4 years of post-water return monitoring surveys in East Maui Streams with colleagues at Division of Aquatic Resources.

Higashi, G. R., **J.E. Parham**, S. Hau and E.K. Lapp. 2014. Monitoring Changes in Habitat, Biota, and Connectivity Resulting from Water Returns in the East Maui Streams of East Wailua Iki, West Wailua Iki, and Waiohue Streams.

Additionally, Dr. James Parham co-authored the DAR survey reports for the East Maui streams of Kōlea, Waikamoi, Puohokamoa, Punalau, Honomanu, Nua'ailua, 'Ōhi'a, West Wailuā Iki, East Wailuā Iki, Kopili'ula, Waiahue, Pa'akea Gulch, Hanawī, Makapipi, Waihe'e, Pi'ina'au, Waiehu, Honopou, Waiokamilo, Hanehoi, and Wailuanui Streams.

USGS also completed numerous surveys both above and below diversions in East Maui streams and all this information was included in the HSHEP model due to its inclusion in the DAR Aquatic Surveys Database.

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Gingerich, S.B. and Wolff, R.H. 2005. Effects of surface-water diversions on habitat availability for native macrofauna, northeast Maui, Hawaii: U.S. Geological Survey Scientific Investigations Report 2005-5213, 93 p.

Comment 3: *Third, although certain streams have been "restored" to 100% flow, water is still being diverted from streams. For example, the Makapipi stream in Nahiku is one of the "fully restored" streams, yet if you walk to the diversion infrastructure, you can plainly see that the culvert/flume that is meant to channel water north/west of the stream is ABOVE the floodgate. So even though the floodgate is "100% open," there is still a wall across the river that water builds up behind, and the flume is located underneath the base flow water level, so water is still being diverted into the flume. When speaking to local EMI employees about this, they use the excuse that the water is being diverted and released in the next stream over, Hanawi. Even if this is true, this disproves EMI's claim that 100% of Makapipi stream is released and flowing in a base flow condition. Even worse, when we experience heavy rainfall, a larger percentage of water is still diverted. Too many times to count, we have witnessed dry river beds in Lower Nahiku, when the water should be flowing. Stagnant pools of water persist, although water flowing above the diversion is plentiful and abundant.*

This example brings me to my point that EMI should be held accountable for their false statements and definition of "released streams" by the county and state. East Maui is rural, rugged, and isolated, so EMI has gotten away with gross misconduct of water management because of the sheer lack of oversight by our public agency. We the people of East Maui entrust in the county and state agencies to protect our natural resources, so it is high-time that A&B/EMI be held accountable for their corporate-driven blatant disregard of East Maui's natural hydrologic processes, native flora and fauna, and the peoples native sustenance, ancestral, cultural, and spiritual practices within our waterways.

Response 3: We respectfully disagree with your comment that streams ordered to be fully restored are still being diverted. Please note that the work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

- I. *It is intended that diversion structures only need to be modified to the degree necessary to accomplish the amended IIFS and to allow for passage of stream biota, if needed.*
- J. *This Order does not require that every diversion on every tributary be removed or modified, the Commission is only looking at modifications to main stem and major*

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diversions to accomplish the amended IIFS set forth above. The Commission also recognizes that it is not the purpose of this proceeding to determine how the diversions will be modified. That issue will be before the Commission in a subsequent process

K. The intent of the Commission is to allow for the continued use and viability of the EMI Ditch system and will not require the complete removal of diversions unless necessary to achieve the IIFS.

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

However, please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals.

Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

The two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped.

Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts.

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The above is discussed in more detail in Section 4.2.1 of the Final EIS as shown on pages 4-63 to 4-67.

We respectfully disagree with you your comment about EMI employees stating water is being dumped in the next stream, as the streams ordered to be fully restored are no longer being diverted from those streams ordered to be fully restored, including Makapipi Stream.

Regarding your comment about freshets, please note that as discussed in Section 2.1.2 the EMI Aqueduct System is not designed to capture and convey short periods of high streamflow that occurs when it rains heavily in the upslope areas of the watershed. Such larger flows quickly overtop or bypass the diversions and remain in the streams. The system will only divert up to the capacity of the ditches to convey slow moving water along the very slight slopes of the ditches.

Regarding your comment about stagnant pools, please note that the Draft EIS does analyze each reasonable alternative on stream flow in Section 3.4.3 and Section 4.2.1 of the Draft EIS. The combination of the lower and upper bounds used for the HSHEP model in Appendix A, provide the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as by definition the changes must fall somewhere between 100% diversion and 0% diversion.

Two scenarios presented in Appendix A of the Draft EIS, the Proposed Action compliant with the CWRM D&O (Trutta Environmental Solutions' 2018 IIFS scenario) and No Action Alternative (30% remaining flow diversion) are examples of how different flow restoration scenarios result in different amounts of habitat restored. The HSHEP model is used to quantify these differences based on flow restoration changes at specific diversions.

As discussed in Section 3.4.3 of the Draft EIS, the HSHEP model requires specific diversion conditions at each diversion. Applying the model to the Reduced Water Volume alternative would require information regarding where stream flows are proposed to be increased over the Proposed Action and the amounts. Given such information, the HSHEP model is able to readily calculate the number of remaining Habitat Units (HU) in any given scenario. The appendices contained within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report (Appendix A of the EIS) provides the necessary data to form a scenario that the HSHEP model can use to analyze and quantify the changes that occur. Hence, the HSHEP model and the appendices within the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report provides data that can assist decision makers understand how impacts could change across different diversions scenarios.

Regarding your comment about accountability, the current East Maui water revocable permits specify that quarterly reports to the BLNR are required. These reports are mandated to include a statement of compliance with the IIFS and identify the total amount of water being diverted from License Area measured at Honopou. It is expected, and the EIS takes into account, that compliance with the IIFS requirements under the CWRM D&O will also be required under the Proposed Action. In compliance with the CWRM D&O streamflow requirements, EMI has adjusted certain movable portions of gates to

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ensure that streamflow below the gates complies with the IIFS requirements. Compliance with the CWRM D&O IIFS requirements is always subject to CWRM staff verification.

Comment 4: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless all of the streams of East Maui have a healthy flow of water mauka to makai.*

Response 4: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at

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268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: mastercasey@everyactioncustom.com on behalf of [Casey Takayama](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 4:19:51 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Only human being can destroy nature. We need earth but earth does not need us. Other creatures live in nature but we exploit nature's resources for profiting. If we are not harmonious with nature's cycle, our existence will be compromised.

Sincerely,
Casey Takayama
Waimanalo, HI 96795
mastercasey@hotmail.com



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Casey Takayama
Waimanalo, HI 96795
mastercasey@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Casey Takayama:

Thank you for comments dated October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing

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some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *Only human being can destroy nature. We need earth but earth does not need us. Other creatures live in nature but we exploit nature's resources for profiting. If we are not harmonious with nature's cycle, our existence will be compromised.*

Response 2: We acknowledge your comments. With respect to the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai'i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: charm1110@everyactioncustom.com on behalf of [Charles Morales](#)
To: [Public Comment](#)
Subject: Opposition to A&B's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 10:34:33 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui.

While many Maui residents do support agriculture for the central valley we also need to have some common sense about how much water we allow to be taken from the streams that our East Maui residents, farmers, wildlife and aquatic life depend on for survival.

The proposed amounts of water will cause long lasting and in some cases irreparable damage to them. Further the length of the proposed lease is unacceptable. Giving a foreign corporate entity too much control for too long will undoubtedly have extremely negative impacts on our environment as well as community relations.

There remain many other concerns the DEIS fails to either recognize or address such as the effect of these diversions on the conditions of the natural environments downstream and to our coastline aquatic life, or how this may affect hunting or gathering access for our local residents.

I do not believe any stream flow diversion should be approved until all concerns are resolved to the satisfaction of our community.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Charles Morales
Wailuku, HI 96793
charm1110@gmx.com



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September 3, 2021

Mr. Charles Morales
Wailuku, HI 96793
charm1110@gmx.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Morales:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui.*

While many Maui residents do support agriculture for the central valley we also need to have some common sense about how much water we allow to be taken from the streams that our East Maui residents, farmers, wildlife and aquatic life depend on for survival.

The proposed amounts of water will cause long lasting and in some cases irreparable damage to them.

Response 1: We acknowledge your comments and understand that you are opposed to the Proposed Action.

With regards to your comment about how much water will be taken from the streams in East Maui, please note that as described in Section 2.1.2 of the Draft EIS, under the Proposed Action approximately 87.95 mgd will be diverted from the License Area, and an additional 4.37 mgd in between Honopou and Māliko Gulch for the uses described in the EIS.

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With regards to impacts to East Maui residents and farmers, the CIA for the Nāhiku, Ke‘anae, Honomanū and Huelo License Areas prepared by CSH provided as Appendix F to the Draft EIS, and as further supplemented for the Final EIS, includes a regional analysis of the entire License Area, including the non-petitioned streams and the petitioned-streams. Section 4.6 of the Final EIS has been revised to more fully describe the cultural practices and related impacts for the streams within the License Area, including the non-petitioned streams as shown on pages 4-171 to 4-425.

Earthplan conducted a Social Impact Assessment (SIA) that is included in EIS Appendix G and summarized in Section 4.7.2 of the EIS. Focus groups convened for the purposes of identifying and assessing social impacts included Huelo / Ha‘ikū residents and farmers. As discussed in Section 4.7.2, the social impact of diverting water is generational, and one that has affected livelihoods, family cohesion, the ability to integrate with environment for food gathering and recreation, resource stewardship, and personal connections or disconnections with values inherent in their lifestyles.

Furthermore, economic and fiscal impacts, including agricultural related economic impacts are discussed in detail for the East Maui region. This information is included in Appendix H and Appendix I which are summarized in Sections 4.7.3 and 4.7.4 of the EIS respectively. These studies found that the Proposed Action would have little agricultural or economic impact to the East Maui region.

Specifically, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including

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information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

With regards to wildlife and aquatic life, please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown on pages 4-56 to 4-67 of the Final EIS. The above excerpt and the updated text on pages 4-56 to 4-67 present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See pages 4-56 to 4-67 of the Final EIS.

Section 4.4 of the EIS specifically addresses the impacts of the Proposed Action to flora and fauna resources within the License Area, including a discussion of the cumulative impacts. Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS that was prepared by SWCA included a survey of approximately 33,000 acres of land in East Maui referred to in the SWCA report as the License Area and approximately 30,000 acres of agricultural land in Central Maui that it referred to as the Service Area. These areas were collectively referred to as the Study Area throughout the SWCA report. This report is summarized in Section 4.4 of the EIS, which has been supplemented with a discussion on potential impacts on a watershed by watershed basis,

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using data produced by the HSHEP model and HIGAP data provided by the State, along with surveys conducted within the region as shown on pages 4-121 to 4-124 and pages 4-129 to 4-131.

Comment 2: *Further the length of the proposed lease is unacceptable. Giving a foreign corporate entity too much control for too long will undoubtedly have extremely negative impacts on our environment as well as community relations.*

Response 2: We acknowledge your comments. Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters.

However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years.

Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term maybe and diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to

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farm for a long enough period to recover its planned investment. Please also see pages 3-50 to 3-80 of the Final EIS for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

With regards to your comment about a foreign corporate entity, Mahi Pono will introduce new agricultural activity to the State of Hawai‘i, which will benefit the State by increasing food production, employment, payroll, profits for farm tenants and companies supplying goods and services, and tax revenues to the State and County of Maui as described in Sections 4.7.3 and 4.7.4 of the Draft EIS as well as Appendix H (Economic and Fiscal Impact Study) and Appendix I (Agricultural and Related Economic Impacts). While profits from Mahi Pono’s farming activities, when they exist, will be distributed to its investors, including but not limited to PSP, a Canadian pension fund, most of the economic benefits will remain in Hawai‘i. Please note that farming activity typically requires significant upfront investment, with much later returns. The capital for that investment is provided by Mahi Pono’s investors. Hence, the financial impact of a foreign-owned company is taken into account when assessing the Proposed Action.

Comment 3: *There remain many other concerns the DEIS fails to either recognize or address such as the effect of these diversions on the conditions of the natural environments downstream and to our coastline aquatic life, or how this may affect hunting or gathering access for our local residents.*

Response 3: We respectfully disagree with your comment. With regards to wildlife and aquatic life, please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown on pages 4-56 to 4-67 of the Final EIS. The above excerpt and the updated text on pages 4-56 to 4-67 present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the

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HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See pages 4-56 to 4-67 of the Final EIS.

With regards to nearshore coastal environments, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species ('O'opu naniha (*Stenogobius hawaiiensis*), 'O'opu akupa (*Eleotris sandvicensis*) and 'Ōpae 'oeha'a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opuloa, as a non-petitioned stream, is not expected to have flow

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restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on page 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on page 4-83.

With regards to hunting and gathering access, it is recognized that the License Area could be smaller for the proposed Water Lease than the 33,000 acres of State-land that has historically been the subject of the water lease and/or revocable permits for East Maui surface water. BLNR, under the terms of the revocable permits in effect as of January 1, 2020, removed the Hanawi Natural Area Reserve, consisting of approximately 7,500 acres, from the land area encumbered by the revocable permits which has been reflected in the various figures depicting the License Area in the Final EIS. DLNR-DOFAW has expressed a desire to further reduce the License Area by removing portions of the Ko'olau Forest Reserve that are not managed by A&B/EMI or that A&B/EMI does not need to operate, maintain and repair the EMI Aqueduct System. It is assumed that the management of public access to those lands would fall on a State Agency as discussed in Section 3.2.2.2 of the Draft EIS. However, due to concerns about public safety, including safety from risks from stream flooding and risks related to the EMI Aqueduct System, it is not anticipated that DLNR would authorize unfettered public access to the EMI Aqueduct System, and therefore it is not anticipated that members of the public would be in a position to report "streamflow violations."

Section 3.2.2.2 of the Draft EIS discusses an alternative, the "Modified Lease Area" alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

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Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access to areas that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding impacts to the areas that would allow for more public access. Moreover, impacts of the Modified Lease Area alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories.

Comment 4: *I do not believe any stream flow diversion should be approved until all concerns are resolved to the satisfaction of our community.*

Response 4: We acknowledge your comments. Please note that the terms and conditions of the Water Lease are at the discretion of the BLNR.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: canf7777@everyactioncustom.com on behalf of [Chelsea Ann Furtado](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 11, 2019 7:20:00 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

This is not right. Please do what's right for the community as a whole. Hawaiian water and land rights should be respected. It's all we have left. Please allow us to practice our culture and FEED OUR OHANA. If you don't care about Hawaiian culture, protect the right to feed our families. This is so sad and heartbreaking.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Chelsea Ann Furtado
46 -157 Humu St Kaneohe, HI 96744-3612
canf7777@gmail.com



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Chelsea Ann Furtado
46-157 Humu St
Kaneohe, HI 96744-3612
canf7777@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Furtado:

Thank you for comments dated October 11, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *This is not right. Please do what's right for the community as a whole. Hawaiian water and land rights should be respected. It's all we have left. Please allow us to practice our culture and FEED OUR OHANA. If you don't care about Hawaiian culture, protect the right to feed our families. This is so sad and heartbreaking.*

Response 2: We acknowledge your comments. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates

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that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, see pages 4-239 to 4-252 of the Final EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the*

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following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: canf7777@everyactioncustom.com on behalf of [Chelsea Ann Furtado](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 11, 2019 7:20:00 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

This is not right. Please do what's right for the community as a whole. Hawaiian water and land rights should be respected. It's all we have left. Please allow us to practice our culture and FEED OUR OHANA. If you don't care about Hawaiian culture, protect the right to feed our families. This is so sad and heartbreaking.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Chelsea Ann Furtado
46 -157 Humu St Kaneohe, HI 96744-3612
canf7777@gmail.com

From: chermcmaui@everyactioncustom.com on behalf of [cheryl hendrickson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 5:53:03 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
cheryl hendrickson
Haiku, HI 96708
chermcmaui@aol.com

From: [Cheryl Hendrickson](#)
To: lan.c.hirokawa@hawaii.gov
Cc: [Public Comment](#); info@mahipono.com
Subject: Proposed Lease & DEIS
Date: Wednesday, November 6, 2019 10:02:43 AM

To whom it may concern-

Mahi Pono should NOT be granted a 30 year permanent lease to divert East Maui waters to Central Maui.

The tactics used by A&B and Mahi Pono thus far reeks of suspicion for the following reasons;

-For the DEIS process to be controlled by the applicant, A&B/Mahi Pono, who also paid for the DEIS preparation, automatically makes it biased. To submit a 2700 page, vague, redundant DEIS with a 45 day time limit for review is unreasonable. To deny granting an extension for review also adds to suspicion.

- A&B's sale contingency that, if Mahi Pono is not granted long term water leases from the state, they will have to rebate \$31 million shows an incentive to scew the process and accuracy.

- The four day, flora and fauna survey conducted over 33,000 acres that concluded that water diversion would have no effect on resources, culture and habitat is ridiculous. That sort of conclusion needs years of observation to estimate.

-To say crops cannot grow as well as in Central Maui is a falsehood. If crops grew well in Central Maui they would

not need diverted water in the first place. Not to mention the years of toxic, chemical fertilization required by sugarcane.

-The hiring of COO Tim O'Laughlin, a California attorney, that specializes in privatizing public water, is an extreme red flag.

Maui water is a public trust. The government has an obligation to protect, control and regulate the use of it's resources for it's citizens. The Board of Land and Natural Resources should be in charge of preparing the EIS. This would hopefully give good, educated decision making a chance. We need set water standards for all of Hawaii's streams. If not this will be a constant, reoccurring problem from those of profiteering and avarice.

Mahalo,
Cheryl Hendrickson

-Board of land and natural resources BLNR, preparation eis

The very fact they were not in existence until the purchase of Maui lands seems precarious.



10238-04
September 3, 2021

Ms. Cheryl Hendrickson
Haiku, HI 96708
chermcmaui@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Hendrickson:

Thank you for comments dated October 18, 2019 and November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Mahi Pono should NOT be granted a 30 year permanent lease to divert East Maui waters to Central Maui.

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing

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some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The tactics used by A&B and Mahi Pono thus far reeks of suspicion for the following reasons;*

-For the DEIS process to be controlled by the applicant, A&B/Mahi Pono, who also paid for the DEIS preparation, automatically makes it biased. To submit a 2700 page, vague, redundant DEIS with a 45 day time limit for review is unreasonable. To deny granting an extension for review also adds to suspicion.

Response 2: Regarding your comment about the Applicant preparing the Draft EIS, BLNR determined that A&B was to prepare the EIS for the proposed Water Lease. As explained in Section 1.4 of the Draft EIS, in connection with A&B's May 2001 submittal to the BLNR requesting that the BLNR offer a long-term (30 year) water lease at public auction, A&B offered to perform the associated HRS, Chapter 343 environmental review. As part of the contested case hearing on the proposed Water Lease, NHLC, on behalf of Nā Moku, objected to A&B undertaking the environmental review process, and asserted that the BLNR was required to prepare conduct the environmental review. NHLC later orally withdrew its objection during oral arguments before the BLNR in May 2015. BLNR issued an order on April 14, 2016, directing A&B to scope the EIS, including the identification of the portions of the EIS that could proceed prior to the CWRM issuing a final IIFS decision, and those portions which could not. That scope was filed with the BLNR in June 2016. On July 8, 2016, the BLNR approved the scope and instructed that "A&B and EMI should proceed with the preparation of an environmental impact statement (EIS) in as expeditious manner as possible." The EIS recites this history in Section 1.3.3 of the Draft EIS and recognizes that the Water Lease will be awarded by public auction.

With regards to your comment about the public comment period that followed the Draft EIS, please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 3: *- A&B's sale contingency that, if Mahi Pono is not granted long term water leases from the state, they will have to rebate \$31 million shows an incentive to scew the process and accuracy.*

Response 3: Please note that this issue is outside the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using

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government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 4: - *The four day, flora and fauna survey conducted over 33,000 acres that concluded that water diversion would have no effect on resources, culture and habitat is ridiculous. That sort of conclusion needs years of observation to estimate.*

Response 4: Regarding your comment about the length of time to conduct physical surveys related to the flora and fauna resources, ground and aerial surveys were conducted in 2017 and 2018 by SWCA to field-verify vegetation types and species found during previous surveying and mapping efforts. It was determined that the HIGAP vegetation data layer produced by Gon et al. (2006) was highly representative of the vegetation found in the "Study Area." Please note that the SWCA report, provided as EIS Appendix C, defined the "Study Area" as the collective License Area and the 30,000 acres of agricultural land that it referred to as the "Service Area." The HIGAP mapping data was used to estimate species distributions and potential impacts for the entire 33,000-acre License Area. Threatened and endangered species were categorized by each species' potential to occur in each vegetation type based on habitat needs. Methods have been further clarified in Appendix C, as summarized in Section 4.4 of the Final EIS as shown on page 4-113.

Comment 5: -*To say crops cannot grow as well as in Central Maui is a falsehood. If crops grew well in Central Maui they would not need diverted water in the first place. Not to mention the years of toxic, chemical fertilization required by sugarcane.*

Response 5: Please note that nowhere in the EIS is this stated. Rather, as summarized in Section 4.7.4 and Appendix I, "East Maui Water Lease: Agricultural and Related Economic Impacts"

Central Maui has some of the best agricultural conditions in the State for farming, including a large area in a compact configuration, high-quality soils, high solar radiation, a location near markets and shipping terminals, and potentially ample water at low delivery costs (assuming a new Water Lease with a reasonable use fee), and for lessees rents that will be comparatively low.

The basis for this finding is given in Subsection 5.a of Appendix I (pp. 13 to 22), along with Figures 4 to 12 (pp. 70 to 78) in Appendix I.

Without sufficient water to irrigate crops, most of Central Maui would change from green expanses of farmland to fire-prone dry-land grasses. However, since diversified crops require much less water than sugarcane, there is sufficient water to restore many of the streams in East Maui and to grow crops in Central Maui.

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However, for Central Maui to reach its agricultural potential, surface water from East Maui will be required to irrigate the Central Maui fields.

Comment 6: *-The hiring of COO Tim O'Laughlin, a California attorney, that specializes in privatizing public water, is an extreme red flag.*

Response 6: Please note that your comment about Mr. Tim O'Laughlin is outside the scope of this EIS. As noted in Response #3, the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 7: *Maui water is a public trust. The government has an obligation to protect, control and regulate the use of it's resources for it's citizens. The Board of Land and Natural Resources should be in charge of preparing the EIS. This would hopefully give good, educated decision making a chance. We need set water standards for all of Hawaii's streams. If not this will be a constant, reoccurring problem from those of profiteering and avarice.*

Response 7: With regards to your comment about the public trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown in pages 1-25 to 1-27.

Regarding your comment about the BLNR preparing the EIS, as noted in Response #2, the BLNR determined that A&B was to prepare the EIS for the proposed Water Lease. As explained in Section 1.4 of the Draft EIS, in connection with A&B's May 2001 submittal to the BLNR requesting that the BLNR offer a long-term (30 year) water lease at public auction, A&B offered to perform the associated HRS, Chapter 343 environmental review. As part of the contested case hearing on the proposed Water Lease, NHLC, on behalf of Nā Moku, objected to A&B undertaking the environmental review process, and asserted that the BLNR was required to prepare conduct the environmental review. NHLC later orally withdrew its objection during oral arguments before the BLNR in May 2015. BLNR issued an order on April 14, 2016, directing A&B to scope the EIS, including the identification of the portions of the EIS that could proceed prior to the CWRM issuing a final IIFS decision, and those portions which could not.

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That scope was filed with the BLNR in June 2016. On July 8, 2016, the BLNR approved the scope and instructed that “A&B and EMI should proceed with the preparation of an environmental impact statement (EIS) in as expeditious manner as possible.” The EIS recites this history in Section 1.3.3 of the Draft EIS and recognizes that the Water Lease will be awarded by public auction.

Comment 8: *-Board of land and natural resources BLNR, should be in preparation of the EIS. The very fact they were not in existence until the purchase of Maui lands seems precarious.*

Response 8: As noted in Response #2, the BLNR determined that A&B was to prepare the EIS for the proposed Water Lease. As explained in Section 1.4 of the Draft EIS, in connection with A&B's May 2001 submittal to the BLNR requesting that the BLNR offer a long-term (30 year) water lease at public auction, A&B offered to perform the associated HRS, Chapter 343 environmental review. As part of the contested case hearing on the proposed Water Lease, NHLC, on behalf of Nā Moku, objected to A&B undertaking the environmental review process, and asserted that the BLNR was required to prepare conduct the environmental review. NHLC later orally withdrew its objection during oral arguments before the BLNR in May 2015. BLNR issued an order on April 14, 2016, directing A&B to scope the EIS, including the identification of the portions of the EIS that could proceed prior to the CWRM issuing a final IIFS decision, and those portions which could not. That scope was filed with the BLNR in June 2016. On July 8, 2016, the BLNR approved the scope and instructed that “A&B and EMI should proceed with the preparation of an environmental impact statement (EIS) in as expeditious manner as possible.” The EIS recites this history in Section 1.3.3 of the Draft EIS and recognizes that the Water Lease will be awarded by public auction.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

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Letter to Ms. Cheryl Hendrickson

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September 3, 2021

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: cliffdev@everyactioncustom.com on behalf of [Cliff Devries](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 8:17:04 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

I would assume that bribery through significant campaign contributions provides incentives for you to consider A & B's request to control most of the water from east Maui streams. This is not the proper moral behavior of representatives of the people. The water should be shared with the small farms in the area.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Cliff Devries
Honolulu, HI 96816
cliffdev@hotmail.com



10238-04
September 3, 2021

Mr. Cliff Devries
Honolulu, HI 96816
cliffdev@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Devries:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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Letter to Mr. Cliff Devries
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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *I would assume that bribery through significant campaign contributions provides incentives for you to consider A & B's request to control most of the water from east Maui streams. This is not the proper moral behavior of representatives of the people. The water should be shared with the small farms in the area.*

Response 2: Please note that this comment is outside the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: copegg6@everyactioncustom.com on behalf of [Co Pegg](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 22, 2019 9:50:41 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. The people of Maui have waited for our water to return to us. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui. The water to local streams should be returned to the people for the diversity of fish and plant life. Make the East Maui streams have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Co Pegg
656 Meakanu Ln Wailuku, HI 96793-2948
copegg6@gmail.com



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September 3, 2021

Co Pegg
656 Meakanu Ln
Wailuku, HI 96793-2948
copegg6@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Co Pegg:

Thank you for comments dated October 22, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. The people of Maui have waited for our water to return to us. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui. The water to local streams should be returned to the people for the diversity of fish and plant life. Make the East Maui streams have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS. Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: 333cory@everyactioncustom.com on behalf of [Cory H](#)
To: [Public Comment](#)
Subject: Water Justice
Date: Wednesday, October 2, 2019 11:01:20 PM

Dear Mr. Matsukawa,

Please explain how your proposal is fair to all, especially people living in areas where A & B has taken much of the water for years.

Wouldn't it be more fair to give those people most of the water for as many years as A & B has had most of the water?

If this was done, what contributions are people with restored water likely to give the community, compared to what A & B would give?

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Cory H
KULALOA Hilo, HI 96720
333cory@gmail.com

From: 333cory@everyactioncustom.com on behalf of [Cory Harden](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 13, 2019 7:39:39 AM

Dear Mr. Matsukawa,

Water justice for all!

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Cory Harden
Hilo, HI 96720
333cory@gmail.com



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September 3, 2021

Mr. Cory Harden
Kulaloa, Hilo, HI 96720
333cory@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Harden:

Thank you for comments dated October 2, 2019 and October 13, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please explain how your proposal is fair to all, especially people living in areas where A & B has taken much of the water for years. Wouldn't it be more fair to give those people most of the water for as many years as A & B has had most of the water?*

Response 1: We acknowledge your comments. However, please note that it is not within the scope of the EIS to determine what is and what is not fair. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 2: *If this was done, what contributions are people with restored water likely to give the community, compared to what A & B would give?*

Response 2: Your comment about what contribution are people with restored water likely to give is unclear. However, please note as discussed in detail in Response #3 that several East Maui stream were restored under the 2018 CWRM D&O. Moreover, the socio-economic impacts of the Proposed Action are addressed at length in Section 4.7 of the Draft EIS, and in further detail in Appendices G through I

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(Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report). Draft EIS Section 4.7 has subsections addressing impacts to populations and impacts (Section 4.7.1), impacts to social characteristics (Section 4.7.2), impacts to the economy and other fiscal considerations (4.7.3), and impacts to the agricultural economy. (4.7.4). The potential socio-economic impacts of the alternatives to the Proposed Action considered by the Draft EIS are analyzed in Section 3.4.11 (Social Characteristics), 3.4.12 (Economic and Fiscal Resources), and 3.4.13 (Agricultural and Related Economic Resources). The Draft EIS thoroughly addressed cumulative socio-economic impacts in Section 4.17. That discussion has been further supplemented by updates in the Social Impact Assessment, Economic and Fiscal Impact Study, and Agricultural and Related Economic Impacts report as shown in pages 4-331 to 4-336 of the Final EIS.

Comment 3: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 3: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

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habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 4: *Water justice for all!*

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Response 4: As noted in Response #3 above, please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields

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Letter to Mr. Cory Harden

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previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: dannygr@everyactioncustom.com on behalf of [Daniel Grantham](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 11:17:45 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Daniel Grantham
PO Box 610 Haiku, HI 96708-0610
dannygr@hawaiiintel.net

From: [Daniel Grantham](#)
To: Ian.c.hirokawa@hawaii.gov; [Public Comment](#)
Cc: [Daniel Grantham](#)
Subject: Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas
Date: Tuesday, November 5, 2019 12:27:17 PM

From: Daniel Grantham

To: Ian Hirokawa, Earl Matsukawa

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas

Please accept my comments on the subject DEIS.

I care very deeply about this proposed lease of public water because I am a twenty-five year resident of Huelo. Our nearest stream, Hanehoi, is due to be restored, but many of our neighbors depend on other streams like Waipio, Mokupapa and Ho'olawa, which were never even considered for revised stream flows. I have watched neighbors suffer from lack of stream water for irrigation, for water to purify for household use when rain catchment is not enough, or when their shallow wells and springs are lowered by lack of ground water as streams are entirely diverted in dry seasons.

A proper DEIS needs to include alternative plans that provide adequate flows year round for all these streams where hundreds of people live, not just the three Huelo streams that are supposed to be restored.

I have neighbors who have given up on farming due to lack of reliable water supply. I have walked the stream valleys here and seen abandoned taro loi in almost all the wider, less steep parts of almost all the streams I've walked. Cumulatively, these would be miles of once productive taro fields. I have seen loi on state lease land near diversions, and am concerned that no archeological studies are required, because "no ground altering activities are proposed", ignores the poor management by EMI causing channel and bank erosion that leads to uprooting of large trees that wash downstream, damaging loi and Hawaiian historic sites.

It is clear that before stream diversion, there were many hundreds, probably thousands of Hawaiians growing food in East Maui stream beds. It is ridiculous and perhaps criminal of an EIS to ignore damages to environment and culture in the past when it is asking to continue those damages without remedy simply because they have never been properly addressed.

Another unexamined issue is the value of the aquatic life these streams provided to people for food gathering. Fish, shellfish and native plants were vital to Hawaiians that lived along these streams for hundreds of years. The whole ecosystem of ocean and streams was crucial in maintaining quality of life for many thousands of Hawaiians for centuries. The loi left in streams is evidence of that life, just as the rise of plantations for export coincided with the loss of self sufficiency in food, clean water, land to live on and plants for shelter and clothing. It is significant that Hawaiian language associates water, wai, with wealth, just as it is significant that as the water was taken to the corporate landowners, the wealth was taken along with it.

The state recognizes a public trust in public resources like water and clean air, and this DEIS should be explicit in how that trust is being respected, instead of just assuming there is no problem in continued taking from the public while ignoring ongoing damage to the life and the land.

I am asking that the DEIS answer these important questions, and that it offer more time to read, consider and comment on its 2700 pages. The record of EMI's poor management alone, which is not mentioned in the DEIS, has resulted in far more than damage to archeological sites. Consider the proliferation of invasive plants and animals that crowd out native plants and are harmful to a healthy watershed, the

creation of stagnant pools in formerly healthy streams, the uncertainty of changing rainfall and water supply over 3 decades, and the probable increase in damage to East Maui watersheds as stream diversion continues in a warming climate, as we have witnessed in 2019.

Thank you for this opportunity to submit comments on this Draft EIS.

Aloha,
Daniel Grantham



10238-04
September 3, 2021

Daniel Grantham
P.O. Box 610
Haiku, HI 96708-0610
dannygr@hawaiiintel.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Grantham:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Mr. Daniel Grantham

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Letter to Mr. Daniel Grantham

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A proper DEIS needs to include alternative plans that provide adequate flows year round for all these streams where hundreds of people live, not just the three Huelo streams that are supposed to be restored.

Response 2: We acknowledge your comments and understand that you are a Huelo resident. We do note and agree that Waipi'o, Mokupapa, and Ho'olawa streams were not a part of the CWRM proceedings and did not receive an IIFS. The reason they were not considered by CWRM is because these streams were not a part of the petitions filed by NHLIC. Regarding your neighbors suffering from a lack of stream flow for irrigation, it is unclear if you are discussing the three streams mentioned in your comment or not. Regardless, Waipi'o, Mokupapa, and Ho'olawa Streams were analyzed using the HSHEP model presented in Appendix A and Section 4.2.1 of the EIS. Please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

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However, please note that the above has been revised as shown in pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text in 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See pages 4-61 to 4-62 of the Final EIS. Moreover, please note that the HSHEP model includes 'opae within its analysis.

However, the HSHEP model does not account for water needed offstream. In response to this comment, it has been acknowledged in Section 4.7.2 of Final EIS that many of the communities downstream of the EMI Aqueduct System adjacent to the non-petitioned streams do not have access to MDWS water and depend upon these streams to meet their domestic water use as shown on pages 4-262 to 4-263.

With regards to your comment about alternative plans, it is assumed that restoration scenarios of the non-petitioned streams would fall under the Reduced Water Volume alternative. The Reduced Water Volume alternative described in Chapter 3 of the EIS provides an assessment of the impacts of less water being made available for the Proposed Action, including Maui Pono farm plan in the Central Maui agricultural fields. Specifically, consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

Comment 3: *I have neighbors who have given up on farming due to lack of reliable water supply. I have walked the stream valleys here and seen abandoned taro loi in almost all the wider, less steep parts of almost all the streams I've walked. Cumulatively, these would be miles of once productive taro fields. I have seen loi on state lease land near diversions, and am concerned that no archeological studies are required, because "no ground altering activities are proposed", ignores the poor management by EMI causing channel and bank erosion that leads to uprooting of large trees that wash downstream, damaging loi and Hawaiian historic sites.*

Response 3: We acknowledge your comments, however, you do not offer specificity. We assume that you are referring to the Huelo region. With regards to taro farming, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

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Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown in pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamo Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or

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nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

We acknowledge your comments and recognize that you have observed what appears to be abandoned taro lo‘i. Please note that an archaeological literature review and field inspection was prepared to determine the likelihood that historic properties (any building, structure, object, district, area, or site over 50 years old) may be affected by the project and, based on findings, consider cultural resource management recommendations. This document was intended to facilitate the project’s planning and support the project’s environmental review compliance. The archaeological literature review and field inspection report included an analysis of the natural and built environment of the license area, a comprehensive review of traditional and historic background information of the region, a review of previous archaeological studies and findings in the region, and a field inspection of the license area focused on inspecting the areas nearest to the EMI aqueduct system infrastructure and access roads. The investigation did not include an inventory of all historic properties that may be present within the license area, but has provided cultural resource management recommendations based on the extensive research and analysis conducted during the study.

A Chapter 6E-7 and 6E-42 historic preservation review letter dated 25 January 2017 (Log No. 2017.00026; Doc. No. 1701GC08) sent from the SHPD to the DLNR Land Division requested that, pursuant to HAR §13-284-5(b)(5)(A and C), an archaeological inventory survey (AIS) and architectural inventory survey would be required prior to issuance of the lease and that these surveys also be preceded by inventory plans.

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Additional information regarding the lease was provided to the SHPD including the understanding that the proposed water lease will not involve any ground disturbance and that the potential impact of flooding from abandoning the diversion on five streams will not be greater than periodic naturally occurring events. A subsequent Chapter 6E-8 historic preservation review letter (Log No. 2017.00026; Doc. No. 1706MBF11) sent from the SHPD to the DLNR Land Division updated the previous correspondence to no longer request the completion of an AIS plan or AIS in the project area in conjunction with the proposed lease because SHPD found that an AIS was not required since no ground disturbing activity is planned as part of the Proposed Action.

Regarding your comment about channel and bank erosion, the majority of the diversion structures are made of concrete, metal or wood and were designed to be stable (not easily washed out) when subjected to the common high flow events typical in East Maui streams. Local erosion issues were primarily caused by access roads to the diversion structures. Complete removal of the structures is likely to cause disruption of the stream bottom and stream banks and this will result in high erosion rates. However, EMI staff cannot perform any stream alteration work without first consulting with CWRM or the USACE. This includes work such as the cutting or uprooting of trees along stream embankments. Please note that many of the events also occur during large freshets where stream levels are extremely high and unpredictable.

A consult letter was mailed and emailed to you on 20 February 2020. CSH then followed up by email on 3 March 2020. However, no response was received.

Comment 4: *It is clear that before stream diversion, there were many hundreds, probably thousands of Hawaiians growing food in East Maui stream beds. It is ridiculous and perhaps criminal of an EIS to ignore damages to environment and culture in the past when it is asking to continue those damages without remedy simply because they have never been properly addressed.*

Response 4: Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI

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Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown in pages 4-331 to 4-336.

Comment 5: *Another unexamined issue is the value of the aquatic life these streams provided to people for food gathering. Fish, shellfish and native plants were vital to Hawaiians that lived along these streams for hundreds of years. The whole ecosystem of ocean and streams was crucial in maintaining quality of life for many thousands of Hawaiians for centuries. The loi left in streams is evidence of that life, just as the rise of plantations for export coincided with the loss of self sufficiency in food, clean water, land to live on and plants for shelter and clothing. It is significant that Hawaiian language associates water, wai, with wealth, just as it is significant that as the water was taken to the corporate landowners, the wealth was taken along with it.*

Response 5: We acknowledge your comments. The CIA, Appendix F of the EIS, thoroughly describes the intimate relationships that Hawaiians had with their environment and natural / cultural resources

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which is summarized in Section 4.5 and 4.6 of the Draft EIS. Specifically, Section 4.5 of the Draft EIS states:

There are legends of the gods Kāne and Kanaloa visiting the region causing fresh water to spring up, leaving their mark on the area. There is the myth of Kana, who is the son of the goddess Hina, who is said to have resided in East Maui. Kana along with his brother, Niheu, saved their mother Hina from Hā'upu, after she was abducted from Kapepe'ekauila. There is the story of 'Ai'ai receiving his fishing powers from his father, Kū'ula, and setting up new fishing grounds around the Hawaiian Islands, including the East Maui region. The demigod Maui made the Ko'olau region of Maui Island famous as this was the part of the island where Maui chose to ascend to the top of Haleakalā to snare the sun so that his mother Hina could dry her kapa (tapa). Many of the natural resources and natural phenomena, such as the flora and fauna, rain and lighting, were believed to be kinolau (physical manifestations) of gods, goddesses, and nature spirits of Hawaiian antiquity creating unique cultural landscapes. The famous shark god of Ko'olau, Hi'u, is said to reside in a cave near Ke'anae wharf.

Over 150 place names were documented throughout the East Maui region. The place names indicate the intimate relationship that Native Hawaiians had with the natural environment. The place names found throughout East Maui indicate that the lands were widely used for multiple purposes relevant to Native Hawaiian subsistence, habitation, and history. The land bears names associated with agriculture, domestic, and recreational uses of the local streams and pools. Sometimes these place names are references to the actions of historic individuals, and at other times to the deeds of legendary or mythological figure, but often are rich with symbolic associations to the point of encompassing a comprehensive history of a place that can combine all these elements. Tables within CSH's report contain the documented place names of Hāmākua Loa and Ko'olau Moku (See Appendix E)...

Evidence from the abundance of land divisions, place names, and heiau are suggestive that the period of habitation in East Maui between initial establishment and western contact was extensive. Evidence suggests that there were not many taro terraces throughout the region as the geography is not favorable due to the gulches and not many flats. However, where possible, especially in Ke'anae, taro terraces were cultivated. There is evidence that many of the stream beds were lined with stream taro well into the uplands and dry agriculture was utilized above the coastal area. The East Maui region is extremely fertile, and with an abundance of water resources, it was productive and supported a large population...

The most significant change in land-use in the Hawaiian Islands came with the Māhele of 1848 which changed the communal land system to one of private ownership. The

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foundation for private land ownership set by the Māhele of 1848 began a marked pace of development across the entire island chain, and Maui was no exception to the age of Western development. The Māhele enabled many foreigners and foreign nationals to acquire land for the establishment of ranching and plantation operations, including the infrastructure projects that were aimed at supporting these land-intensive industries (aqueducts, roads, etc.). Within the Māhele records for the License Area there are over 85 claims for terrestrial agricultural features such as lo‘i (irrigated taro terraces), pākanu (garden, planting enclosure), ‘auwai (artificial irrigation canals, used to feed lo‘i), kula (fields, open pasture), pali (cliff, precipice, or steep hill suitable for cultivation of select plants), kīhāpai (small cultivated patch or orchard), mo‘o (ridge for similar purpose as pali), and pō‘alima (small agricultural patches tended in traditional times solely for chiefly tribute) (Pukui and Elbert 1986). There are also kuleana claimed for their naturally occurring vegetation and the right of tenants to collect these resources, such as ‘ie (aerial roots of the ‘ie‘ie vine, used in plaiting, basketry, and wicker weaving), olonā (shrub with fibrous bark used in fishnets, baskets, and to construct tī leaf raincoats and capes), wauke (paper mulberry used in making tapa cloth), hala (pandanus tree) and wildly occurring kalo (taro) and sweet potato (Pukui and Elbert 1986:50,94,256,286). Lastly are the kuleana claims over aquatic resources such as off-shore fisheries (documented as “sea” in LCA awards) and muliwai (river mouth, freshwater pool behind a shoreline sand bar) that are naturally occurring and not man made (Pukui and Elbert 1986). The Māhele also marked a turning point in Hawai‘i’s history as Western commercial interests and travelers began their influence on the remote region of East Maui and elsewhere.

Moreover, the CIA has been updated with follow-up interviews in response to comments on the Draft EIS and identifies impacts to the regional environment, taro farming, and freshwater ecosystems within the License Area based consultation with the community which are summarized in Section 4.6 of the Final EIS as shown in pages 4-239 to 4-252.

Comment 6: *The state recognizes a public trust in public resources like water and clean air, and this DEIS should be explicit in how that trust is being respected, instead of just assuming there is no problem in continued taking from the public while ignoring ongoing damage to the life and the land.*

Response 6: Regarding your comment about the mandated protection of the Public Trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B’s 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has

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been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27.

Comment 7: *I am asking that the DEIS answer these important questions, and that it offer more time to read, consider and comment on its 2700 pages.*

Response 7: We acknowledge your comments noting for a time extension to allow for additional public comment. Please note that the period for public comment associated with the Draft EIS is defined by statute, as set forth under Hawai'i Revised Statutes (HRS) § 343-5. There is no statutory mechanism that provides for time extensions of the comment period. Hence, the comment period for the Draft EIS was not extended. Please note that more than 400 comment letters were received during the statutory comment period.

Comment 8: *The record of EMI's poor management alone, which is not mentioned in the DEIS, has resulted in far more than damage to archeological sites. Consider the proliferation of invasive plants and animals that crowd out native plants and are harmful to a healthy watershed, the creation of stagnant pools in formerly healthy streams, the uncertainty of changing rainfall and water supply over 3 decades, and the probable increase in damage to East Maui watersheds as stream diversion continues in a warming climate, as we have witnessed in 2019.*

Response 8: Your comment regarding EMI's poor management is acknowledge, however, it is unclear which archeological sites you are referring to as your comment does not specifically identify any sites by name or location. Following receipt of your Draft EIS comments you were invited to participate in additional consultation for the CIA by CSH to assist in identifying the archaeological sites that you commented on as being damaged from poor management of the License Area.

As noted in Response #3 above, a letter and figures were sent via email to you and via USPS on 20 February 2020. CSH sent a follow up email dated 3 March 2020. However, CSH did not receive a response from you.

As noted in Response #4, please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

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Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: kunihi@everyactioncustom.com on behalf of [FF Daryl Boeche](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, November 2, 2019 6:03:14 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

My family has lived on Waiokamilo Stream for over 7 generations. It has once again be a Health Hazard. Disease spreading mosquitoes have made the stagnant water their breeding ground. Our animals have contracted Leptospirosis after ingesting the stagnant water and our tourists have lost their right to view a "Beautiful Ecosystem". This stream should be investigated under the Hawaii Department of Health for its diseased spreading bacteria and micro-organisms. We have waiting too long and demand the water to be released like we were supposedly awarded June 2018. WAIOKAMILO STREAM 100%.

Thank you for this opportunity to submit comments on this Draft EIS.

With all my heart,

FF Daryl Kunihi Boeche

Sincerely,
FF Daryl Boeche
14175 Hana Hwy Haiku, HI 96708-5754
kunihi@yahoo.com



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Daryl Kunihi Boeche
14175 Hana Hwy
Haiku, HI 96708-5754
kunihi@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Boeche:

Thank you for comments dated November 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Mr. Daryl Kunihi Boeche

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On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing

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some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *My family has lived on Waiokamilo Stream for over 7 generations. It has once again be a Health Hazard. Disease spreading mosquitoes have made the stagnant water their breeding ground. Our animals have contracted Leptospirosis after ingesting the stagnant water and our tourists have lost their right to view a "Beautiful Ecosystem". This stream should be investigated under the Hawaii Department of Health for its diseased spreading bacteria and micro-organisms. We have waiting too long and demand the water to be released like we were supposedly awarded June 2018. WAIOKAMILO STREAM 100%.*

Response 2: We acknowledge your comments and understand that you and your family have lived along Waiokamilo Stream for over 7 generations. Please note that Waiokamilo Stream was one of the stream subject to the CWRM D&O and was ordered to be fully restored. Hence, this stream will no longer be diverted.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown in pages 4-58 to 4-61, pages 4-126 to 4-127, and pages 4-130 to 4-131.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of

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diversions in streams where natural flow patterns have continuously existed. While the reactions of poeciliid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Regarding your comment that the State of Hawai'i Department of Health should investigate Waiokamilo Stream for bacteria and micro-organisms that spread diseases, please note that is outside the scope of this EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: infofordenise@everyactioncustom.com on behalf of [Denise Boisvert](#)
To: [Public Comment](#)
Subject: It is time to say no to corporate greed & tyranny
Date: Thursday, October 3, 2019 3:54:06 AM

Dear Mr. Matsukawa,

Alexander and Baldwin have had a pretty good 150 years of dictatorship over the islands and confiscation of natural resources for corporate and personal profit.

I am against their proposal to further divert the streams of East Maui.

East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Enough is enough! Thank you for your kind consideration.

Sincerely,
Denise Boisvert
Honolulu, HI 96815
infofordenise@yahoo.com

From: infofordenise@everyactioncustom.com on behalf of [Denise Boisvert](#)
To: [Public Comment](#)
Subject: Opposing A&B's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 6:45:14 PM

Dear Mr. Matsukawa,

How many more decades will Alexander and Baldwin control these islands and their natural resources?

Their proposal to further divert the streams of East Maui is based on pure greed. Enough is enough!

East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Please don't let future generations ask why the environment was not cared for when you had this last opportunity.

Sincerely,
Denise Boisvert
Honolulu, HI 96815
infofordenise@yahoo.com

From: infofordenise@everyactioncustom.com on behalf of [Denise Boisvert](#)
To: [Public Comment](#)
Subject: Alexander & Baldwin has ruled these islands for over 150 years. Enough is enough!
Date: Saturday, October 19, 2019 1:02:29 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui.

Alexander & Baldwin has ruled these islands for over 150 years. Enough is enough!

East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Denise Boisvert
Honolulu, HI 96815
infofordenise@yahoo.com



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September 3, 2021

Ms. Denise Boisvert
Honolulu, HI 96815
infofordenise@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Boisvert:

Thank you for comments dated October 3, 2019, October 8, 2019, and October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Alexander and Baldwin have had a pretty good 150 years of dictatorship over the islands and confiscation of natural resources for corporate and personal profit.*

I am against their proposal to further divert the streams of East Maui.

East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Enough is enough!

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in

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Letter to Ms. Denise Boisvert

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June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses.

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The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *How many more decades will Alexander and Baldwin control these islands and their natural resources?*

Their proposal to further divert the streams of East Maui is based on pure greed. Enough is enough!

East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Please don't let future generations ask why the environment was not cared for when you had this last opportunity.

Response 2: As noted in Response #1 above, Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Ms. Denise Boisvert
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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: oshea606@everyactioncustom.com on behalf of [Dennis O'Shea](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 10:06:40 PM

Dear Mr. Matsukawa,

Dear DLNR,

The day is not far off when you will personally be held accountable for representing neo-colonial interests over the interests of the aina and the ohana.

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Dennis O'Shea
Maui resident and Hawai'i national

Sincerely,
Dennis O'Shea
PO Box 11107 Lahaina, HI 96761-6107
oshea606@gmail.com



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Dennis O'Shea
P.O. Box 11107
Lahaina, HI 96761-6107
oshea606@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
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Letter to Mr. Dennis O'Shea

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: manaulu@everyactioncustom.com on behalf of [don cooke](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 21, 2019 5:37:10 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. So much of the testimony that has been submitted in favor of the continuance has always been to claim that diversified ag will use less or no diverted water. Over and over the BLNR and elected officials have prevented the return of waters. Bad land practices of the past should not justify continuing diversion. The ecosystem needs the water to regenerate itself. Streams, native farms, nearshore habitats need to regenerate.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
don cooke
Kaneohe, HI 96744
manaulu@hotmail.com



10238-04
September 3, 2021

Mr. Don Cooke
Kaneohe, HI 96744
manaulu@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Cooke:

Thank you for comments dated October 21, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 2: *So much of the testimony that has been submitted in favor of the continuance has always been to claim that diversified ag will use less or no diverted water. Over and over the BLNR and elected officials have prevented the return of waters. Bad land practices of the past should not justify continuing diversion. The ecosystem needs the water to regenerate itself. Streams, native farms, nearshore habitats need to regenerate.*

Response 2: Please note that the Proposed Action will use significantly less water than what was historically used for sugarcane operations. As discussed in Draft EIS Section 2.1.2 (East Maui/License Area) and 2.1.4 (Central Maui Field System), the long-term average delivery of water by the EMI Aqueduct System up until 1986 had been approximately 165 mgd (prior to any use of water by the MDWS or HC&S on the agricultural fields). This measurement was taken at Māliko Gulch. As discussed in Section 2.1.2 of the Draft EIS, the amount of water that could be diverted from the License Area under the Proposed Action is approximately 87.95 mgd.

With regards to your comment about the return of waters, please note as discussed in Response #1 above, On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

With regards to stream impacts, please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

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The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown on pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text in on pages 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See A on pages 4-61 to 4-62 of the Final EIS.

With regards to farm impacts, similarly, the CIA for the Nāhiku, Ke‘anae, Honomanū and Huelo License Areas prepared by CSH provided as Appendix F to the Draft EIS, and as further supplemented for the Final EIS, includes a regional analysis of the entire License Area, including the non-petitioned streams and the petitioned-streams. Section 4.6 of the Final EIS has been revised to more fully describe the cultural practices and related impacts for the streams within the License Area, including the non-petitioned streams as shown on pages 4-171 to 4-254.

Earthplan conducted a Social Impact Assessment (SIA) that is included in EIS Appendix G and summarized in Section 4.7.2 of the EIS. Focus groups convened for the purposes of identifying and assessing social impacts included Huelo / Ha‘ikū residents and farmers. As discussed in Response #15 above, for this area referred to in Comment #20, the social impact of diverting water is generational, and one that has affected livelihoods, family cohesion, the ability to integrate with environment for food gathering and recreation, resource stewardship, and personal connections or disconnections with values inherent in their lifestyles.

Furthermore, economic and fiscal impacts, including agricultural related economic impacts are discussed in detail for the East Maui region. This information is included in Appendix H and Appendix I which are summarized in Sections 4.7.3 and 4.7.4 of the EIS respectively. These studies found that the Proposed Action would have little agricultural or economic impact to the East Maui region.

Specifically, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional

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acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

With regards to nearshore coastal environments, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown on the pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species (‘O‘opu naniha (*Stenogobius hawaiiensis*), ‘O‘opu akupa (*Eleotris sandvicensis*) and ‘Ōpae ‘oeha‘a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

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The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams, of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi'ina'au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa'akea will have connectivity flow restoration, while 'O'opulua, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown on pages 4-78 to 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown on pages 4-78 to 4-83.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: dbach@everyactioncustom.com on behalf of [Dorothy Bach](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 24, 2019 4:26:33 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

In addition to the above truth, Alexander and Baldwin are positioning themselves to charge others for water which is a RESOURCE not a commodity. From the reading and research I have done it appears that Maui may be the first island to mismanage its water to the point of shortages for enough water for the continuous stream of people that relocate to Maui (tourists also strain the island's resources).

Private interests and the creation of a water crisis divert the focus from prevention to reacting. Greed and mismanagement of vital resources needs to be addressed BEFORE a water shortage occurs.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Dorothy Bach Ph.D., LMHC, NCC

Sincerely,
Dorothy Bach
3140 Waiālae Ave Dept BEHAVIORALSCIEN Honolulu, HI 96816-1510
dbach@chaminade.edu

From: [Dorothy Bach](#)
To: [Public Comment](#)
Subject: Resources vs. commodities
Date: Thursday, October 24, 2019 4:40:18 PM

Alexander and Baldwin veil their agendas under the need of water for agriculture. If enough water is diverted to their purposes they will be in a position to dictate the price of water to the residents of Maui Island.

We lose sight of prevention and succumb to greed, mismanagement, and man made crises. Living in survival mode with the shadow of a new crisis does not make for a life one thrives in; one can only react and attempt to save themselves and their family. Prevention and conservation of water for each island would be an excellent discussion for the BLNR to have with the constituents of Maui and perhaps each island.

Planning and a concerted effort to pass a legacy on to future generations would be a wonderful thing to do. Looking at the resource of water and how to conserve this for the children and their children would be a blessing. If the bottom line is the dollar and everyone looks at water and people as commodities to be bought and sold then we may really face extinction.

Please concern yourselves with the future generations and how best to serve the land and distribute its resources fairly. Hawaii is unlike any other place in the world and I have travelled a bit, keep this beautiful and blessed land whole and caring for the people that have been graced to be able to live here.

Sincerely,

*Dorothy Bach, Ph.D., LMHC, NCC
Internship Director for Mental Health Counseling
Adjunct Professor
808.739.8557*

Chaminade University of Honolulu
3140 Waiālae Avenue
Honolulu, HI 96816-1578



dbach@chaminade.edu

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Dorothy Bach, Ph.D., LMHC, NCC
Chaminade University of Honolulu
3140 Waialae Avenue
Honolulu, HI 96816-1510
dbach@chaminade.edu

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Dr. Bach:

Thank you for comments dated October 24, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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Private interests and the creation of a water crisis divert the focus from prevention to reacting. Greed and mismanagement of vital resources needs to be addressed BEFORE a water shortage occurs.

Response 2: Your comments are unclear. However, there are many factors which could affect the cost of water delivered to the County of Maui. The cost of water to the County of Maui will depend, in part, on the amount of the lease payment for the Water Lease, which will be established by the BLNR. An appraisal to determine the fair market value of the Water Lease will be conducted prior to issuance of the Water Lease. Our expectation is that the DLNR, on behalf of the BLNR, will commission, or approve the commissioning of, the appraisal. The cost of water to the County of Maui also depends on the operational costs of running the EMI Aqueduct System, including all costs of complying with applicable regulations and laws.

However, as discussed in 4.7.3 of the Draft EIS, under the Proposed Action (where the maximum amount of water is limited by the CWRM D&O and therefore below historical averages), the rate MDWS currently pays to EMI (\$0.06 per kgal) will increase because EMI's per unit operating cost will increase as a result of fixed costs being spread out over a lower volume of water diverted and possible higher lease payments to the State compared to historic payments. While it is anticipated that the delivery costs to the County of Maui will increase, the exact amount of the increase cannot be known until the Water Lease is finalized. However, the estimate analyzed in the Draft EIS assumed a year 2030 water service fee rate of \$0.08 per kgal. This figure was calculated based on the ratio of operational cost to the MDWS service fee for 2008 to 2013. Under this assumption, the MDWS would pay an estimated \$214,600 per year to EMI. However, please note that this discussion in Section 4.7.3 of the Final EIS has been updated to take into account the latest equivalent per unit cost under the latest revocable permit as shown in pages 4-277 and 4-283.

The Draft EIS did address potential impacts to MDWS customers should the cost of water delivery through the EMI Aqueduct System to the MDWS rise significantly. County of Maui water service rates vary by class of users (i.e., residential, commercial, agricultural, etc.), but average approximately \$4 per kgal. Inasmuch as the same water rates are charged across the nine water systems in the County there are many factors that determine the water service rate. Due to the fact that water rates are not dependent on the service area a customer is located in, increases associated with increased water delivery costs from the EMI Aqueduct System and from new water source development for Upcountry Maui would affect MDWS ratepayers countywide, including domestic and agricultural users in Upcountry Maui. Moreover, as discussed in Section 4.7.3 of the Draft EIS an analysis conducted by Brown and Caldwell determined that the lifecycle cost of developing new water sources for Upcountry Maui customers would be \$34 per

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Letter to Dorothy Bach, Ph.D., LMHC, NCC

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kgal, which far exceeds the current average water service rate of \$4 per kgal. Specifically, in Section 4.7.3 of the Draft EIS, it is stated:

Under the Brown and Caldwell analysis, the life-cycle unit cost of developing and operating wells is \$34 per kgal. It is noted that the life-cycle unit cost to develop new water for Upcountry Maui customers is high. In comparison, a similar analysis conducted for the Central Maui Water System showed a unit cost of less than \$10 per kgal, or less than one third the cost of Upcountry Maui water development (Brown and Caldwell, 2014). The total life-cycle cost for 7.95 mgd of new wells is \$1.2 billion. The life-cycle cost is expressed as the net present value of all the costs incurred over 25 years, including capital, operating, and maintenance costs.

Moreover, as discussed in Appendix I, from an agricultural perspective, should water costs significantly rise for Upcountry Maui water users, farming in Upcountry Maui would significantly decrease as many farms would relocate to Central Maui given the overall better agronomic conditions, cheaper rents, and cheaper water.

Comment 3: *Alexander and Baldwin veil their agendas under the need of water for agriculture. If enough water is diverted to their purposes they will be in a position to dictate the price of water to the residents of Maui Island.*

Response 3: Your comments are unclear. However, as discussed in Response #2 above, there are many factors which could affect the cost of water delivered to the County of Maui. The cost of water to the County of Maui will depend, in part, on the amount of the lease payment for the Water Lease, which will be established by the BLNR. An appraisal to determine the fair market value of the Water Lease will be conducted prior to issuance of the Water Lease. Our expectation is that the DLNR, on behalf of the BLNR, will commission, or approve the commissioning of, the appraisal. The cost of water to the County of Maui also depends on the operational costs of running the EMI Aqueduct System, including all costs of complying with applicable regulations and laws.

Comment 4: *We lose sight of prevention and succumb to greed, mismanagement, and man made crises. Living in survival mode with the shadow of a new crisis does not make for a life one thrives in; one can only react and attempt to save themselves and their family. Prevention and conservation of water for each island would be an excellent discussion for the BLNR to have with the constituents of Maui and perhaps each island.*

Planning and a concerted effort to pass a legacy on to future generations would be a wonderful thing to do. Looking at the resource of water and how to conserve this for the children and their children would be a blessing. If the bottom line is the dollar and everyone looks at water and people as commodities to be bought and sold then we may really face extinction.

Please concern yourselves with the future generations and how best to serve the land and distribute its resources fairly. Hawaii is unlike any other place in the world and I have travelled a bit, keep this beautiful and blessed land whole and caring for the people that have been graced to be able to live here.

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Letter to Dorothy Bach, Ph.D., LMHC, NCC

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Response 4: We acknowledge your comments. Please note that the authorization, as well as the terms and conditions of the Water Lease is at the discretion of the BLNR.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office

From: mauileab@everyactioncustom.com on behalf of [Gaylene Barron](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 5:42:53 PM

Dear Mr. Matsukawa,

I am opposed to this action because water was taken already for many decades from East Maui residents and the results caused hardship and famine. This was a sacrifice too large to endure again. With climate change now, we cannot afford such long term agreements that also take away such a valuable resource needed more than ever for food production.

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Gaylene Barron
88 Mamao Pl Haiku, HI 96708-5204
mauileab@gmail.com

From: [Galena L. Barron-Sacson](#)
To: [Public Comment](#)
Subject: Re: Watershed Lease DEIS Statement
Date: Sunday, November 3, 2019 2:19:40 AM

November 3, 2019

From: Gaylene Louise Barron

To: Ian Hirokawa, Earl Matsukawa

Re: Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas

Dear Mr. Ian Hirokawa, Earl Matsukawa:

Please accept my comments on the subject DEIS.

I care very deeply about this proposed lease of public water because I am a grandmother to 3 native Hawaiian children, who are and will be in Kamehameha Schools on Maui. Water is Life and part of their heritage.

- I'm a concerned upcountry Maui resident and lived in Nahiku. Water is so important for food production.
- I'm a mother-in-law to a native Hawaiian practitioner in east Maui who gathers from the streams
- I'm a grandmother to native Hawaiian grandchildren and one of Hana, and know the water history. Elder Kapuna Aaron Brown shared with me many stories about how as a child in Nahiku he watched people starve from no taro, when the water was diverted. It is time to restore the water for the Kalo farming, the land and to help sustain food production that Hawai'i needs.
- I'm concerned that no one is taking care of much of the watershed as it was used for the sugar industry, which is now gone, and this resource is too precious to waste.

"The EIS needs to consider these significant points:"

"The EIS needs to discuss the option of not diverting any streams, and discuss how that would benefit East Maui ecosystems and East Maui communities. In light of history, how is this an improvement and is it justified?"

- The EIS should give an in-depth review of and discuss the benefits of shorter term lease options of less than 30 years, due to uncertainties of future rainfall, climate change and future water supplies. Making shorter lease periods will provide flexible options for these changes.
- The EIS needs to discuss methods of restoring the 13 streams in the Honopou to Kailua area, where lots of people live and farm and gather. All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. The EIS needs to discuss the impacts of continuing those diversions, which will decimate 85% of native stream habitat and impact thousands of local residents. It's time to make a difference for the environment, not just big business and profits over people and their ability to sustain life with access to water.

I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.

Aloha,

Gaylene L Barron
88 Mamao Place A
Haiku, HI 96708

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Lea Gaylene Barron

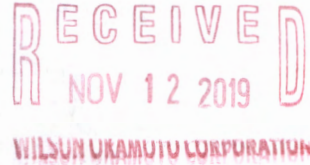
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November 3, 2019

From: Gaylene Louise Barron

To: Ian Hirokawa, Earl Matsukawa

Re: Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas



Dear Mr. ~~Ian Hirokawa~~ ^{Earl} Matsukawa:

Please accept my comments on the subject DEIS.

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I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.

Aloha,

Gaylene L Barron
88 Mamao Place A
Haiku, HI 96708



From: [Hirokawa, Ian C](#)
To: [Public Comment](#)
Subject: FW: East Maui Water Lease DEIS statement
Date: Monday, November 4, 2019 9:03:35 AM

From: Galena L. Barron-Sacson <mauileab@gmail.com>
Sent: Sunday, November 3, 2019 2:13 AM
To: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Subject: RE: East Maui Water Lease DEIS statement

November 3, 2019

From: Gaylene Louise Barron
To: Ian Hirokawa:
Re: Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas

Dear Mr. Ian Hirokawa, Earl Matsukawa:

Please accept my comments on the subject DEIS.

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- I'm a concerned upcountry Maui resident and lived in Nahiku. Water is so important for food production.
- I'm a mother-in-law to a native Hawaiian practitioner in east Maui who gathers from the streams
- I'm a grandmother to native Hawaiian grandchildren and one of Hana, and know the water history. Elder Kapuna Aaron Brown shared with me many stories about how as a child in Nahiku he watched people starve from no taro, when the water was diverted. It is time to restore the water for the Kalo farming, the land and to help sustain food production that Hawai'i needs.
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I am asking that the DEIS include this important information. Thank you for this opportunity to submit comments on this Draft EIS.

Aloha,

Gaylene L Barron
88 Mamao Place A
Haiku, HI 96708

--

Lea Gaylene Barron

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10238-04
September 3, 2021

Ms. Gaylene Barron
88 Mamao Pl
Haiku, HI 96708-5204
mauileab@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Barron:

Thank you for comments dated October 10, 2019 and November 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am opposed to this action because water was taken already for many decades from East Maui residents and the results caused hardship and famine. This was a sacrifice too large to endure again. With climate change now, we cannot afford such long term agreements that also take away such a valuable resource needed more than ever for food production.*

Response 1: We acknowledge your comments and understand that you are opposed to the Proposed Action.

With regards to climate change, climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai‘i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

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Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown in pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

With regards to your comment about food production as it relates to East Maui, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown in pages 4-288 to 4-293.

Comment 2: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

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Letter to Ms. Gaylene Barron

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Response 2: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue

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Letter to Ms. Gaylene Barron

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to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 3: *I care very deeply about this proposed lease of public water because I am a grandmother to 3 native Hawaiian children, who are and will be in Kamehameha Schools on Maui. Water is Life and part of their heritage.*

- *I'm a concerned upcountry Maui resident and lived in Nahiku. Water is so important for food production.*
- *I'm a mother-in-law to a native Hawaiian practitioner in east Maui who gathers from the streams*
- *I'm a grandmother to native Hawaiian grandchildren and one of Hana, and know the water history. Elder Kapuna Aaron Brown shared with me many stories about how as a child in Nahiku he watched people starve from no taro, when the water was diverted. It is time to restore the water for the Kalo farming, the land and to help sustain food production that Hawai'i needs.*
- *I'm concerned that no one is taking care of much of the watershed as it was used for the sugar industry, which is now gone, and this resource is too precious to waste.*

Response 3: We acknowledge your comments and understand that you a concerned Upcountry Maui resident with connections to East Maui. With respect to the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions

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which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai'i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

Comment 4: *The EIS needs to consider these significant points:*

The EIS needs to discuss the option of not diverting any streams, and discuss how that would benefit East Maui ecosystems and East Maui communities. In light of history, how is this an improvement and is it justified?

Response 4: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water

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delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate.

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80, enclosed. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

With regards to your comment about taro farming, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for taro were identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown in pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1)

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Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration status); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O "*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*" (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 5: *The EIS should give an in-depth review of and discuss the benefits of shorter term lease options of less than 30 years, due to uncertainties of future rainfall, climate change and future water supplies. Making shorter lease periods will provide flexible options for these changes.*

Response 5: We acknowledge your comments. Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such

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a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 6: • *The EIS needs to discuss methods of restoring the 13 streams in the Honopou to Kailua area, where lots of people live and farm and gather. All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. The EIS needs to discuss the impacts of continuing those diversions, which will decimate 85% of native stream habitat and impact thousands of local residents.*

Response 6: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the

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Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-61 to 4-67.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams and assesses the impacts of the diversions across an array of environmental criteria.

Comment 7: *It's time to make a difference for the environment, not just big business and profits over people and their ability to sustain life with access to water.*

I am asking that the DEIS include this important information.

Response 7: We acknowledge your comments. Please note that we provided you with detailed responses to each of your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng

Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: gracelovemaui@everyactioncustom.com on behalf of [Grace Pretre](#)
To: [Public Comment](#)
Subject: Comments on diversion of the east maui streams
Date: Wednesday, November 6, 2019 6:22:23 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

I would like to see the eco system of east maui benefit from no diversion of streams, so that native aquatic species can thrive once again.

A lot of people need the water from the stream for agriculture and livelihood, the diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. This is simply not ok and affects a lot of residents of east maui.

Please analyze the threat and damage the diversions have caused to native aquatic species and find a way to do this without killing stream life, nor affecting the native taro farmers & other residents.

Our water supply is essential to our island and needs to stay in the streams for use by the east maui residents. A 30 year lease is unacceptable, as we don't know how the rainfall will be affected by climate change.

these public lands need to be available to the public for hiking and pooled water is breeding grounds for mosquitoes who can carry dengue fever, therefore be detrimental to our population, as well as affect the tourist industry.

changing the flow of streams and altering nature's way has many negative impacts on the land, the animals, the plants and the people, please assess all possible results of this and reconsider, this is not acceptable nor does it support our residents & farmers.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Grace Pretre
Paia, HI 96779
gracelovemaui@gmail.com



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Ms. Grace Pretre
Paia, HI 96779
gracelovemaui@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Pretre:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM

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proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

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Comment 2: *I would like to see the eco system of east maui benefit from no diversion of streams, so that native aquatic species can thrive once again.*

Response 2: Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai'i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the "No Action" alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown in pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

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Comment 3: *A lot of people need the water from the stream for agriculture and livelihood, the diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. This is simply not ok and affects a lot of residents of east maui.*

Response 3: The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided in pages 4-61 to 4-67.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 4: *Please analyze the threat and damage the diversions have caused to native aquatic species and find a way to do this without killing stream life, nor affecting the native taro farmers & other residents.*

Response 4: The Draft EIS included an analysis of the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum

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available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 5: *Our water supply is essential to our island and needs to stay in the streams for use by the east maui residents. A 30 year lease is unacceptable, as we don't know how the rainfall will be affected by climate change.*

Response 5: We acknowledge your comments. Please note that that Chapter 3 of the Draft EIS included an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for

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the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term maybe and diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

With regards to climate change, climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

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However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown in the pages 4-89 to 4-91 as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Comment 6: *these public lands need to be available to the public for hiking and pooled water is breeding grounds for mosquitoes who can carry dengue fever, therefore be detrimental to our population, as well as affect the tourist industry.*

Response 6: With regard to your comment that public lands need to be available to the public for hiking, please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown in pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown in pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown in page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately

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33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawī NAR. It is unlikely that the removal of the Hanawī NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the *potential* to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

With regard to your comment about pooled water being breeding grounds for mosquitoes who can carry dengue fever, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-61.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai‘i.

Comment 7: *changing the flow of streams and altering nature's way has many negative impacts on the land, the animals, the plants and the people, please assess all possible results of this and reconsider, this is not acceptable nor does it support our residents & farmers.*

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Response 7: Please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown in pages 4-61 to 4-62 of Final EIS. The above excerpt and the updated text in pages 4-61 to 4-62 present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See pages 4-61 to 4-62 of Final EIS.

Regarding the East Maui streams in the License Area, the EIS presents four scenarios using the HSHEP model. The diversion amounts were determined in advance and modeled for those specific scenarios. Due to common sense technical challenges to the HSHEP model, not all scenarios were presented or analyzed. To provide context, there are approximately 388 individual diversions in the EMI Aqueduct System. Potentially any of these diversions could: (1) have different levels of water restoration mandated at the diversion location; (2) could have engineering changes to increase fish passage and decrease larval entrainment; and/or (3) have the sequence of water restoration or engineering changes include numerous different scenarios with for example, 50% water return on diversion 1, an engineering change on diversion 2, a 60 % water return and an engineering change on diversion 3, and so on. This could result in many different scenarios - too many for meaningful review, and each potential adjustment would not alter the overall findings as presented in the Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP Model). To be more specific on the number of potential iterative scenarios, there is a formula for the number of permutations = n^r . So, in a stream with 3 diversions, if we wanted to present different flow restoration levels, 0 to 100% in 10% intervals, we get 11^3 which equals 1,331 different scenarios. If a single engineering adjustment is added (2 options of no change and new design), the result is 22^3 , which equals 10,648 scenarios.

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For example, there are 10 diversions on Nā'ili'ilihale Stream, which is one of the non-IIFS streams. Applying different flow restoration levels 0 to 100 in 10% intervals, as discussed above, there are approximately 25,937,424,601 scenarios. Twenty-five billion scenarios are far too many to reasonably understand or consider for management actions. Also note that no engineering changes to those diversions to increase fish passage or decrease larval entrainment were considered in the example. Thus, the number of permutations involved in considering all options for the 300+ diversions in the East Maui streams precludes a systematic optimization of all possible scenarios.

In other words, the difficulty lies in the complexity and the number of possibilities created by those questions regarding the restoration of the non-petitioned streams while attempting to determine the answers to best balance the offstream uses related to the Proposed Action. Therefore, while questions regarding restoration of the non-IIFS streams are valid, the questions need to be constrained to a smaller subset of possibilities to make optimization testing possible. With that caveat stated, some general guiding concepts can be concluded to minimize impacts to the non-petitioned streams from stream diversions.

With respect to diversion locations and amount for non-petitioned streams:

1. Regardless of the way the water is diverted, greater percentages of total streamflow diverted generally result in lower amounts of instream habitat for native stream species. However, when diversion amounts are similar among scenarios,
 - a. Diverting comparable amounts of water at higher elevation diversions is less damaging to instream habitat for native stream species than diverting that water at lower elevation diversions.
 - b. Returning comparable amounts of water at the higher elevation diversions and allowing it to flow downstream without additional diversion will result in more instream habitat than partial water diversion at all diversions due to the compounding impact of entrainment at each diversion.

With respect to modifications of the diversion for improved passage and decrease entrainment:

2. Improvements in diversion passage result in more suitable habitat at most flow amounts.
3. At lower flow restoration amounts, modifications to improve passage result in greater gains in suitable habitat than at higher flow restoration amounts.

Please note that Section 4.2.1 of the Final EIS has been revised to include a general discussion more specific to the impacts and mitigations associated with the non-petitioned streams, and how stream flow restoration will influence Habitat Units in the License Area as shown in pages 4-63 to 4-67. It has also been noted in Section 4.7.2 of Final EIS that many of the communities downstream of the EMI Aqueduct System adjacent to the non-petitioned streams do not have access to MDWS water and depend upon these streams to meet their domestic water use as shown in pages 4-63 to 4-67.

It is assumed that restoration scenarios of the non-petitioned streams would fall under the Reduced Water Volume alternative. As discussed in Response #73 above, the HSHEP model requires specific diversion conditions at each diversion. Applying the model to the Reduced Water Volume alternative would require information regarding where stream flows are proposed to be increased over the Proposed Action

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and the amounts. Given such information, the HSHEP model is able to readily calculate the number of remaining Habitat Units (HU) in any given

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: harlowmaui@everyactioncustom.com on behalf of [HARLOW TODARO](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 12, 2019 11:58:34 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

ALOHA--PLEASE STOP STEALING EAST MAUI WATER FROM THE EAST MAUI RESIDENTS--YOU NEVER HELP OUR PEOPLE AND ARE PROFITEERS AND GREEDY THIEVES TO TAKE OUR WATER FOR ONLY ONE CORPORATION--WE, THE PEOPLE NEED OUR WATER RESTORED NOW, RSVP--
HARLOW

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
HARLOW TODARO
1525 Nahiku Rd Haiku, HI 96708
harlowmaui@gmail.com



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Harlow Todaro
1525 Nahiku Rd
Haiku, HI 96708
harlowmaui@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Harlow Todaro:

Thank you for comments dated October 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct

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System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *ALOHA--PLEASE STOP STEALING EAST MAUI WATER FROM THE EAST MAUI RESIDENTS--YOU NEVER HELP OUR PEOPLE AND ARE PROFITEERS AND GREEDY THIEVES TO TAKE OUR WATER FOR ONLY ONE CORPORATION--WE, THE PEOPLE NEED OUR WATER RESTORED NOW, RSVP—HARLOW*

Response 2: We acknowledge your comments.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: jack@everyactioncustom.com on behalf of [Jack Fisher](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 7:32:31 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

It would be prudent for government officials on Oahu to actually LISTEN and accede to the desires of Maui citizens.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jack Fisher
Kula, HI 96790
jack@mauirealestatebroker.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Jack Fisher
Kula, HI 96790
jack@mauirealestatebroker.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Fisher:

Thank you for comments dated October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoia, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *It would be prudent for government officials on Oahu to actually LISTEN and accede to the desires of Maui citizens.*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 2: We acknowledge your comments. Please note that we provided you with detailed responses above to your comments.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: kaukaulani@everyactioncustom.com on behalf of [Jade Smith](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 5:16:25 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

We need evidence provided now on the 30% water that originated within A&B?

Community has confirmed positive changes with water restored for abundance of sea and fresh water life (Maui Nui Makai Networking Workshop) in Keanae, Nahiku and Hana.

Problem of negligence to the new land owners diverting streams within their properties. They are the ones that are complaining. Also, fact is, the land owners affected by the illegal diversion will be devastated by the diversions (Kipahulu and Honopou, Maui). While on the other hand, many streams are being neglected.

Mahi Pono doesn't need all the water they are claiming. Do the math.

We need more access. Vandalism is majority to the tourism. They pay no attention to properties.

We need lease comments. Where is the change of Ownership? We need more evidence in what is being shared but not backed up with true facts and statistics.

Impacts. There are always impacts. We can provide the impacts if you can't State the fact on this. Remember this is a long term impacts.

Last, no lease! They had 33 years total. A poor excuse to extend but a sneaky and deceitful tactic to prolong the process up to today, November 2019. They have all the money to correct their wrong and restructure the diversion system. This is not negotiable. Stop it already

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jade Smith
PO Box 1269 Kula, HI 96790-1269
kaukaulani@gmail.com



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Jade Smith
PO Box 1269
Kula, HI 96790-1269
kaukaulani@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Smith:

Thank you for comments dated November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The

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need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *We need evidence provided now on the 30% water that originated within A&B?*

Response 2: The EMI Aqueduct System is owned and operated by the East Maui Irrigation Company, LLC. Please note that the 1938 Agreement between A&B / EMI (referred to as “the Company”) and the Territory of Hawai‘i, which has been added to the Final EIS as Appendix R, acknowledges EMI’s ownership of the EMI Aqueduct System. Pursuant to the 1938 Agreement, the Territory of Hawai‘i (now the State) granted perpetual easements to EMI for those portions of the EMI Aqueduct System located on State lands. See EIS Section 3.3, which has been updated in the Final EIS to further discuss rights the EMI Aqueduct System has to a limited amount of water collection irrespective of any Water Lease. See pages 3-24 to 3-25 of the Final EIS.

As described in Section 2.1.2 of the Draft EIS, the EMI Aqueduct System spans both State-owned and EMI-owned lands and is an integrated system. Relative to the proposed Water Lease, the Collection Area for the EMI Aqueduct System covers approximately 50,000 acres, of which 33,000 acres are owned by the State and 17,000 acres are privately owned. See Draft EIS Figure 1-1 (EMI Aqueduct System Collection Area). The EMI Aqueduct System also collections water from purely private lands located to the west of the Collection Area, as noted in Figure 1-1. As mentioned above, under the 1938 Agreement, the State and EMI each granted to the other “perpetual” easements to those portions of the EMI Aqueduct System located on the other’s land. The duration of these “perpetual” easements was stipulated to last until the termination of the 1938 Agreement. The 1938 Agreement is still in place and valid. The State may, but is not obligated to, terminate the 1938 Agreement only if the licenses are offered at auction but EMI

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fails to bid. EMI may, but is not obligated to, terminate the 1938 Agreement if the State fails to offer the licenses at auction. Thus, if no license is offered at auction, the 1938 Agreement provides that EMI may still collect water derived from the EMI owned portions of the Collection Area and, utilizing the easement granted to it in the 1938 Agreement, transport it across the portions of the EMI Aqueduct System that transverse State lands.

The 1938 Agreement defines the “Territory” to include its “successors” (i.e., the State). EMI has not failed to bid at any auction of licenses, so the condition precedent for the State to have the right to terminate has not occurred. While the State has not yet offered the licenses at auction, EMI has not exercised its right to terminate and is instead a proponent of the Proposed Action which would lead to the licenses being offered at auction for the purpose of the continued integrated operation of the EMI Aqueduct System. Neither party has terminated the 1938 Agreement.

We note that CWRM, at p. iii of the Executive Summary of the CWRM D&O, characterized the EMI Aqueduct System as “a valuable asset that delivers offstream public trust benefits such as drinking water, as well as irrigation water for reasonable and beneficial uses.” CWRM further stated, at p. vi: “The Commission’s intent in this decision is to ensure that a sufficient amount of offstream water is available to support the cultivation of diversified agricultural crops on the lands designated as IAL [Important Agricultural Lands] in central Maui.” The continued existence of the 1938 Agreement, with its mutual grant of easements, is necessary in order for the uses of East Maui stream water envisioned by CWRM to be possible. As such, the continued recognition of the 1938 Agreement would appear to be consistent with the Public Trust Doctrine as it has been interpreted by CWRM.

Comment 3: *Community has confirmed positive changes with water restored for abundance of sea and fresh water life (Maui Nui Makai Networking Workshop) in Keanae, Nahiku and Hana.*

Response 3: We acknowledge your comments. Please note that many people at the EISPN public scoping meetings on February 22 and 23, 2017 testified noting positive impacts seen from increased stream flow resulting from the cessation of sugar operations, please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See pages 4-171 to 4-254 of the Final EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. This is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the

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License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSheP model estimated that approximately 79.8% of total HU would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected under the No Action alternative.

Comment 4: *Problem of negligence to the new land owners diverting streams within their properties. They are the ones that are complaining. Also, fact is, the land owners affected by the illegal diversion will be devastated by the diversions (Kipahulu and Honopou, Maui). While on the other hand, many streams are being neglected.*

Response 4: Your comments are acknowledged. However, please note that it is not within scope to assess illegal diversions from private land owners. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 5: *Mahi Pono doesn't need all the water they are claiming. Do the math.*

Response 5: We respectfully disagree with your comment. The CWRM D&O was issued in June 2018 and included the A&B diversified agriculture plan. Mahi Pono did not purchase the Central Maui agricultural fields from A&B until December 2018, which was after the issuance of the CWRM D&O. The Mahi Pono farm plan is not anticipated to have a decrease in water demand over the years, though at full build-out, it will require significantly less water than utilized when sugarcane was cultivated on these same lands. So, while there is a total decrease in water demand over historical sugar operations, as with any new and growing farm operation, the water demand of the Mahi Pono farm plan is expected to increase over the years until full build-out. Moreover, as discussed in Response #44, if more water were to become available in the future, Mahi Pono intends to plant additional crops in areas that are currently planned to be unirrigated pasture due to the lack of enough water to irrigate all 30,000 acres of land.

Comment 6: *We need more access. Vandalism is majority to the tourism. They pay no attention to properties.*

Response 6: Your comment is unclear however, we assume that you are referring to public access. Section 3.2.2.2 of the Draft EIS discusses an alternative, the "Modified Lease Area"

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alternative that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access to areas that are not within the License Area. Please also see Response #55 regarding the revised License Area under the most recent revocable permits and projections related to the geographical extent of the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown in pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding impacts to the areas that would allow for more public access. Moreover, impacts of the Modified Lease Area alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories.

Comment 7: *We need lease comments. Where is the change of Ownership? We need more evidence in what is being shared but not backed up with true facts and statistics.*

Response 7: Your comments are unclear however, we assume that you are referring to sale of A&B land to Mahi Pono. Please note that this is not within scope of the EIS to investigate. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

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Comment 8: *Impacts. There are always impacts. We can provide the impacts if you can't State the fact on this. Remember this is a long term impacts.*

Response 8: Your comments are unclear. With respect to the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai'i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

Comment 9: *Last, no lease! They had 33 years total. A poor excuse to extend but a sneaky and deceitful tactic to prolong the process up to today, November 2019. They have all the money to correct their wrong and restructure the diversion system. This is not negotiable. Stop it already*

Thank you for this opportunity to submit comments on this Draft EIS

Response 9: We acknowledge your comments. With regards to your comment about restructure the diversion system, we assume that your comment relates to the physical condition of the EMI Aqueduct System. In this regard, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely

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energy-efficient. Further, as noted by the USGS study titled, "Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)" The EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: jeklein64@everyactioncustom.com on behalf of [James Klein](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 6:23:34 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

This, like numerous other issues (climate change, food labeling, gun safety, immigration reform, prison reform, education reform, short-term lending regulation, healthcare reform, banking regulation, opioid regulation) remains a vexing problem primarily due to corporations' ability to curry favor with elected officials. The corrupting influence of money in our political system is undermining our democratic traditions and discouraging Americans from voting and/or running for office. This ominous development may well end our experiment in representative democracy unless we alter this decades-long trend. For the sake of the republic, we must amend the US Constitution to state that corporations are not people (and do not have constitutional rights) and money is not speech (and thus can be regulated by state and/or federal campaign finance laws). Short of accomplishing this, no other reform of significance will be achieved. The moneyed interests will turn any reform to their benefit, often at the expense of the nation as a whole.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
James Klein
3501 Monterrey St Corpus Christi, TX 78411-1709
jeklein64@yahoo.com

From: jeklein64@everyactioncustom.com on behalf of [James Klein](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 21, 2019 12:21:09 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

This, like numerous other issues (climate change, food labeling, gun safety, immigration reform, prison reform, education reform, short-term lending regulation, healthcare reform, banking regulation, opioid regulation) remains a vexing problem primarily due to corporations' ability to curry favor with elected officials. The corrupting influence of money in our political system is undermining our democratic traditions and discouraging Americans from voting and/or running for office. This ominous development may well end our experiment in representative democracy unless we alter this decades-long trend. For the sake of the republic, we must amend the US Constitution to state that corporations are not people (and do not have constitutional rights) and money is not speech (and thus can be regulated by state and/or federal campaign finance laws). Short of accomplishing this, no other reform of significance will be achieved. The moneyed interests will turn any reform to their benefit, often at the expense of the nation as a whole.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
James Klein
3501 Monterrey St Corpus Christi, TX 78411-1709
jeklein64@yahoo.com

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James Klein
3501 Monterrey St
Corpus Christi, TX 78411-1709
jeklein64@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear James Klein:

Thank you for comments dated October 2, 2019 and October 21, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

October 2, 2019:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *This, like numerous other issues (climate change, food labeling, gun safety, immigration reform, prison reform, education reform, short-term lending regulation, healthcare reform, banking regulation, opioid regulation) remains a vexing problem primarily due to corporations' ability to curry favor with elected officials. The corrupting influence of money in our political system is undermining our democratic traditions and discouraging Americans from voting and/or running for office. This ominous development may well end our experiment in representative democracy unless we alter this decades-long trend. For the sake of the republic, we must amend the US Constitution to state that corporations are not people (and do not have constitutional rights) and money is not speech (and thus can be regulated by state and/or federal campaign finance laws). Short of accomplishing this, no other reform of significance will be achieved. The moneyed interests will turn any reform to their benefit, often at the expense of the nation as a whole.*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 2: We acknowledge your comments. However, please note that it is not within scope of the EIS to amend the U.S. Constitution and make reforms to government. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "right, privilege, and authority to enter and go upon" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

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Comment 3: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 3: As noted in Response #1 above, please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

Comment 4: *This, like numerous other issues (climate change, food labeling, gun safety, immigration reform, prison reform, education reform, short-term lending regulation, healthcare reform, banking regulation, opioid regulation) remains a vexing problem primarily due to corporations' ability to curry favor with elected officials. The corrupting influence of money in our political system is undermining our democratic traditions and discouraging Americans from voting and/or running for office. This ominous development may well end our experiment in representative democracy unless we alter this decades-long trend. For the sake of the republic, we must amend the US Constitution to state that corporations are not people (and do not have constitutional rights) and money is not speech (and thus can be regulated by state and/or federal*

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campaign finance laws). Short of accomplishing this, no other reform of significance will be achieved. The moneyed interests will turn any reform to their benefit, often at the expense of the nation as a whole.

Thank you for this opportunity to submit comments on this Draft EIS.

Response 4: As noted in Response #2 above, it is not within scope of the EIS to amend the U.S. Constitution and make reforms to government. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: jandelliott@everyactioncustom.com on behalf of [Jan Elliott](#)
To: [Public Comment](#)
Subject: Comments on East Maui Stream Diversions
Date: Thursday, November 7, 2019 6:33:55 AM

Dear Mr. Matsukawa,

As a landowner in East Maui who owns land adjacent to both diverted and undiverted streams, I can clearly see the impact these diversions have on stream life and water flow. It is my belief that the 100+ year old diversion systems are decrepit, causing much of the diverted stream water to be lost and wasted. A and B and it's successors should be required to maintain and improve their diversion systems rather than just taking more water to offset what is lost through poor maintenance. I believe that until a healthy flow of water from mauka to makai is restored, no further water should be diverted for agriculture in Central Maui. I oppose A and B,s Draft Eis.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely
Jan Elliott

Sincerely,
Jan Elliott
46178 Hana Hwy Hana, HI 96713
jandelliott@hawaii.rr.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Jan Elliott
46178 Hana Hwy
Hana, HI 96713
jandelliott@hawaii.rr.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Elliott:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *As a landowner in East Maui who owns land adjacent to both diverted and undiverted streams, I can clearly see the impact these diversions have on stream life and water flow. It is my belief that the 100+ year old diversion systems are decrepit, causing much of the diverted stream water to be lost and wasted. A and B and it’s successors should be required to maintain and improve their diversion systems rather than just taking more water to offset what is lost through poor maintenance. I believe that until a healthy flow of water from mauka to makai is restored, no further water should be diverted for agriculture in Central Maui. I oppose A and B,s Draft Eis.*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 1: We acknowledge your comments and understand that you are a landowner in East Maui. Regarding your comments on diversion impacts, please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

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Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown on pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text in on pages 4-61 to 4-62 of the Final EIS present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See on pages 4-61 to 4-62 of the Final EIS.

Regarding your comment about the old diversion system, we assume that you are referring to the physical condition of the EMI Aqueduct In this regard, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System. We also note that Appendix D of the EIS provides a Historical Structure Assessment East Maui Aqueduct System prepared by Mason Architects to provide an assessment of the historical significance of the EMI Aqueduct System.

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We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

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diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: jlvanpraag@everyactioncustom.com on behalf of [Jane Leatherman Van Praag](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 2:48:23 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jane Leatherman Van Praag
PO Box 354 Bartlett, TX 76511-0354
jlvanpraag@sbcglobal.net

From: jlvanpraag@everyactioncustom.com on behalf of [Jane Leatherman Van Praag](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 11:27:13 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Their stream diversions have harmed the East Maui watershed and the people who rely on it. A&B and Mahi Pono are required by law to respond to every comment.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jane Leatherman Van Praag
PO Box 354 Bartlett, TX 76511-0354
jlvanpraag@sbcglobal.net



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Jane Leatherman Van Praag
PO Box 354
Bartlett, TX 76511-0354
jlvanpraag@sbcglobal.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jane Leatherman Van Praag:

Thank you for comments dated October 3, 2019 and October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

October 3, 2019:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

October 18, 2019:

Comment 2: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Thank you for this opportunity to submit comments on this Draft EIS.

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Comment 3: *Their stream diversions have harmed the East Maui watershed and the people who rely on it. A&B and Mahi Pono are required by law to respond to every comment.*

Response 3: We acknowledge your comments. Regarding your comment about responding to every comment by law, please note that we have provided responses to each point that you bring up in your comment letter as required by HRS § 11-200-22(c)(1).

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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Letter to Jane Leatherman Van Praag
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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: palmtree7@everyactioncustom.com on behalf of [Janice Palma-Glennie](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 11, 2019 8:37:09 PM

Dear Mr. Matsukawa,

Aloha,

I was a Maui resident for 5 years before moving to Hawai'i Island 35 years ago. The way Maui uses -- or abuses - its water affects and sets precedent for the rest of our island chain.

I am in strong opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Those streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of waters from the top of mountains to the sea.

There is a long list of negatives and omissions in the DEIS. Some include:

The DEIS does not discuss a "no diversion" alternative. Nor does it discuss how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather.

Diversions like the ones planned will decimate 85% of native streamlife habitat and impact thousands of local residents and the flora and fauna of an integrated ecosystem that all of us, and particularly native Hawaiian culture, depends upon. The DEIS does not sufficiently analyze the threat and damage the diversions have caused and will cause to native aquatic species.

The DEIS omits any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands in Maui.

The DEIS lacks a discussion of options for more public hiking access to public lands in the proposed lease area, meaning that every hiker will need permission from a private entity. These are public lands that people should be allowed to reasonably access. This is a significant breach of the Public Trust.

The DEIS should give a full review of shorter term lease options. Thirty years is too long with the changes that may occur especially due to climate change.

The DEIS doesn't include potential stagnant water that will increase mosquito populations - a serious and perilous situation which Hawai'i Island residents dealt with only a few years ago with many people getting seriously ill from dengue fever.

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Mahalo for this opportunity to submit comments on this Draft EIS. I look forward to seeing these and other serious issues to be better addressed in the EIS, including the addition of the "no diversion" alternative.

Sincerely,
Janice Palma-Glennie
Kailua-Kona
(former Maui resident)

Sincerely,

Janice Palma-Glennie
PO Box 4849 Kailua Kona, HI 96745-4849
palmtree7@earthlink.net



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September 3, 2021

Janice Palma-Glennie
PO Box 4849
Kailua Kona, HI 96745-4849
palmtree7@earthlink.net

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Janice Palma-Glennie:

Thank you for comments dated October 11, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *The DEIS omits any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands in Maui.*

Response 1: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging

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invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4 of the Final EIS.

Comment 2: *The DEIS lacks a discussion of options for more public hiking access to public lands in the proposed lease area, meaning that every hiker will need permission from a private entity. These are public lands that people should be allowed to reasonably access. This is a significant breach of the Public Trust.*

Response 2: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown in pages 4-305 to 4-309 to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown in pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to

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include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawī Natural Area Reserve (NAR) was removed from the RP area as shown in page 1-2 and page 3-22. Thus, it is anticipated that BLNR may remove the Hanawī NAR from the License Area under any Water Lease. The Hanawī NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawī NAR. It is unlikely that the removal of the Hanawī NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 3: *The DEIS should give a full review of shorter term lease options. Thirty years is too long with the changes that may occur especially due to climate change.*

Response 3: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

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The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 4: *The DEIS doesn't include potential stagnant water that will increase mosquito populations - a serious and perilous situation which Hawai`I Island residents dealt with only a few years ago with many people getting seriously ill from dengue fever.*

Response 4: We respectfully disagree with your comment that the Draft EIS did not discuss the role diverted streams have on mosquito populations in East Maui.

With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled "Modeling" of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown on pages 4-58 to 4-67.

Although the HSHEP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased

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streamflow. First, in addition to breeding in streams, the *Culex* mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the *Culex* mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for *Culex* mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the *Culex* mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of *Culex* mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Comment 5: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Mahalo for this opportunity to submit comments on this Draft EIS. I look forward to seeing these and other serious issues to be better addressed in the EIS, including the addition of the "no diversion" alternative.

Response 5: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The

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need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Regarding your comment about the ‘no diversion’ scenario, please note that the EIS discusses a No Action alternative whereby no Water Lease would be issued. However, under the No Action alternative, the EMI Aqueduct System can still divert up to 30% of the stream water that flows through the License Area based on the 1938 Agreement discussed in Section 3.3 of the EIS. Please note that the comparative impacts of the alternatives are discussed in Section 3.4 of the EIS and Section 3.5 of the Final EIS has been added to summarize the impacts and benefits of the Proposed Action and associated alternatives.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC’s website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: jenmcollins@everyactioncustom.com on behalf of [Jen Collins](#)
To: [Public Comment](#)
Subject: Arid valley, stripped locals
Date: Saturday, October 19, 2019 12:49:19 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

East Maui has waited far longer than 20 years for water rights, fairness let alone EIS.
Why continue irrigate arid valley and deny the righteous originals corporations want to run over.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jen Collins
Lahaina, HI 96761
jenmcollins@yahoo.com



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Jen Collins
Lahaina, HI 96761
jenmcollins@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Jen Collins:

Thank you for comments dated October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *East Maui has waited far longer than 20 years for water rights, fairness let alone EIS.*

Why continue irrigate arid valley and deny the righteous originals corporations want to run over.

Thank you for this opportunity to submit comments on this Draft EIS.

Response 2: We acknowledge your comments. Please note that Section 4.7.3 and Section 4.7.4 of the Draft EIS correctly describes accurate information regarding the benefits of the Mahi Pono farm plan. At Section 4.7.3:

At full operations, the Mahi Pono farm plan will cause a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops. Annual sales are expected to reach \$155.9 million. The pastures would support a cattle herd of about 7,300 cow-and-calf animal units, produce over 4,300 calves per year, and generate revenues of about \$4.8 million per year. The solar farm would generate about 82,125 mW of electricity per year, with revenues of about \$8.2 million per year. Combined farm and energy revenues would reach \$168.9 million per year in direct sales (far exceeding the 2006 revenues from sugar production of \$101 million, and the \$116 million average for the 2008 to 2013 period).

And at Section 4.7.4:

At full development, the Mahi Pono farm plan would result in a substantial amount of crop production, including about 8 million pounds per year from the Community Farm, 321 million pounds per year from orchards, and 9 million pounds per year of tropical fruits, plus production from row crops, annual crops, and energy crops.

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Impacts related to agricultural economics are discussed in detail in Section 4.7.4 of the EIS based on findings in Appendix I. Please refer to Section 4.7.4 and Appendix I to see discussions regarding the numerous benefits anticipated as a result of the Proposed Action. In summary, at full build-out, the Mahi Pono farm plan is anticipated to produce a significant amount of crops for both local consumption and export generating significant beneficial economic and fiscal impacts, providing numerous direct and indirect jobs, State and County tax revenues, etc.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kanakafreedom@everyactioncustom.com on behalf of [Jennifer Chrupalyk](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 7:01:20 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Mahi Pono has become the new imperialists who are working hard to divide our people while lending their name to the list of who wishes to profit from the stream diversion issues that we are working so hard to reconcile.

Although the land rental under Mahi Pono appears financially cheap, there are many issues that I would like to see fully resolved prior to allowing this company to bring California values to Hawai'i.

1. Mahi Pono should be utilizing a desalination plant to water its thousands of acres, not continue to steal water from other parts of the island. This proves that Mahi Pono's priority is to profit from our people, and not for the betterment of our futures.
2. By fostering a method of division against our people, Mahi Pono is contributing to the past and current problems that have plagued our island for decades.
3. This is another method of asserting corporate powers to govern land. At which point has Mahi Pono contacted the heirs of these lands to engage their mana'o in governance of the land that belongs to them?
4. Where is the evidence that Mahi Pono has gotten permission from those affected by the water diversions? Or is Mahi Pono asserting corporate powers to continue the theft?

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jennifer Chrupalyk
PO Box 1793 Wailuku, HI 96793-6793
kanakafreedom@gmail.com



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10238-04
September 3, 2021

Jennifer Chrupalyk
PO Box 1793
Wailuku, HI 96793-6793
kanakafreedom@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Chrupalyk:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The

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need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *Mahi Pono has become the new imperialists who are working hard to divide our people while lending their name to the list of who wishes to profit from the stream diversion issues that we are working so hard to reconcile.*

Response 2: We acknowledge your comments however, we disagree with your comment. Mahi Pono objective is to continue to transition as much of the former sugarcane land in Central Maui to a diversified agricultural operation. Moreover, the objectives of the Proposed Action as stated in Section 1.2 of Draft EIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to transition fields previously used for sugar cane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku.

Comment 3: *Although the land rental under Mahi Pono appears financially cheap, there are many issues that I would like to see fully resolved prior to allowing this company to bring California values to Hawai'i.*

Response 3: We acknowledge your comments and provide you with detailed responses to your comments below.

Comment 4: *Mahi Pono should be utilizing a desalination plant to water its thousands of acres, not continue to steal water from other parts of the island. This proves that Mahi Pono's priority is to profit from our people, and not for the betterment of our futures.*

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Response 4: With respect to your comment encouraging desalinization of the existing Mahi Pono fields, please note that Chapter 3 of the Final EIS has been updated to include Section 3.1.1.4 which analyzes the option of desalinization and its environmental impacts, as shown in pages 3-14 to 3-19. As shown in the discussion in pages 3-14 to 3-19, desalinization of the existing Mahi Pono brackish water wells would yield approximately half the amount of brackish water, about 50 mgd. Furthermore, desalinization is not a cheaper option than diverting surface water resources and has other negative environmental impacts such as impacts to regional hydrologic, geologic, and biological resources. Hydrological resources would be assumed to experience the greatest impacts due to withdrawals and injections greatly influencing the regional water sources. Highly in-depth hydrogeological study will need to be done within the area of the proposed injection wells due to the fact that the injection wells must discharge the brine into a confined aquifer/space at least ¼ mile under any drinking water aquifers so as not to contaminate any other freshwater sources. Due to the increased restrictions and preventative measures that are required under Class I injection wells (Class I is the type of injection well associated with industrial waste), there would not be a need for a “no-farming zone” since, under construction regulations for a Class I well, extreme preventative measures are required in order to prevent harmful water from infiltrating drinking water sources in the event of a spill/leakage. Additionally, the harmful discharge from the desalination plant will be pumped extremely deep underground, minimizing any effect to surrounding soils. Nevertheless, a buffer area between the injection wells and the agricultural lands would be recommended. Please also note that for operational purposes, the tunnels and diversions of the EMI Aqueduct System are not in need of significant repair as you state.

Comment 5: *By fostering a method of division against our people, Mahi Pono is contributing to the past and current problems that have plagued our island for decades.*

Response 5: Please note that the Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past.

Comment 6: *This is another method of asserting corporate powers to govern land. At which point has Mahi Pono contacted the heirs of these lands to engage their mana ‘o in governance of the land that belongs to them?*

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Response 6: Your comments are unclear. Note that over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). Moreover, the Cultural Impact Assessment and the Social Impact Assessment studies also conducted community outreach documenting community perceptions and opinions.

Comment 7: *Where is the evidence that Mahi Pono has gotten permission from those affected by the water diversions? Or is Mahi Pono asserting corporate powers to continue the theft?*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 7: Again, your comments are unclear. As noted in Response #6 above, over 700 pages of the Draft EIS consist of pre-assessment consultation correspondence (Appendix J), scoping meeting transcripts (Appendix K and Appendix L), and scoping meeting and EIS Preparation Notice (EISPN) comments and responses (Appendix M). Moreover, the Cultural Impact Assessment and the Social Impact Assessment studies also conducted community outreach documenting community perceptions and opinions. With regards to permission, please note that the authorization of the Water Lease is within the purview of the BLNR.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: kapekaaweau@everyactioncustom.com on behalf of [Jessie Kekiwi-Aweau](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 15, 2019 9:59:08 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

My ohana on both sides Kaauamo and Kekiwi use the streams to feed our lo'i kalo (taro patches). We also use these streams for our rights to culturally gather and provide for our families.

It is our right to have these God given waters to flow where it is naturally meant to flow with no DIVERSION to help create any disturbance in these East Maui streams.

Without these free flowing waters into it's rightful streams, the stream and ocean life can be greatly disturbed and will no longer be available for our future generations. You see we have been passed down from generation to generation the knowledge to care for our natural resources. Once this diversion disturbance takes place there will be no natural resources left for our future generations.

Greed is not the answer to this situation, but honesty and facts are. Take into consideration that diverting water from OUR East Maui streams will affect all our SMALL communities in the East end, and our natural resources and gathering rights will be limited.

We have been fighting these water issues FOREVER.

Thank you for taking the time in reading my letter.

Jessie Kekiwi-Aweau

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,

Jessie Kekiwi-Aweau

2817 Koea Pl Makawao, HI 96768-8718

kapekaaweau@gmail.com

From: kapekaaweau@everyactioncustom.com on behalf of [Jessie Kekiwi-Aweau](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, November 6, 2019 1:51:37 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

We the farmers of East Maui have been fighting for OUR waters in the streams to be released back to our streams at a 100% stream flow.

We have been in this fight for a long time and for two generations long (I am third generation, my kids are fourth generation, and my grandkids are fifth generation). This is heart breaking to see that this fight for OUR waters continues as I seen my Tutu and my Dad pass while this fight continues.

We have seen our water at its fullest, and then seen it slowly disappearing, then GONE. WE SEEN OUR STREAM BEDS EMPTY, DRIED UP, WITH NO STREAM LIFE IN IT.

Without water our stream animals cannot thrive, and also our ocean animals that come up into the streams to spawn cannot do their circle of life routine.

Without water in our streams(streamflow at 100%), our kalo cannot get the nutrients it needs to help us (as farmers, hunters, and gatherers) live a sustainable life. Disease and rot tends to harm our kalo (taro), which then make our kalo not edible or not worth selling.

With out water in our streams our stream life die, such as the 'opae, hihiwai, 'o'opu, prawn, ocean life such as 'aholehole, kumu, and mullet won't be able to use the streams to spawn. Forest animals won't be able to drink water and they would need to come close to homes and find water.

It has been disturbing seeing our waterfalls disappear because streamflow is being diverted. The water belongs to the people of the area where the stream flows naturally. It is called stealing when one takes something that don't belong to them.

So I am calling the State, County, and all who is involved in this DIVERSIONS of our water, THIEVES.

Mind you, I have ohana that work for these organizations, and understand that they have to do what they have to do to support their family, but WE AS TARO FARMERS HAVE TO DO WHAT WE HAVE TO DO TOO. SO IN ORDER FOR US TO CONTINUE FARMING AS TARO FARMERS, WE NEED OUR WATER TO BE RESTORED, RETURNED, AND KEPT IN OUR STREAM BEDS FLOWING AT A HUNDRED PERCENT WITH NO DIVERSIONS.

MAHALO FOR YOUR TIME,
JESSIE KEKIWI-AWEAU
DESCENDANT OF WAILUANUI

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jessie Kekiwi-Aweau
2817 Koea Pl Makawao, HI 96768-8718
kapekaaweau@gmail.com



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10238-04
 September 3, 2021

Jessie Kekiwi-Aweau
 2817 Koea Pl
 Makawao, HI 96768-8718
kapekaaweau@gmail.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Jessie Kekiwi-Aweau:

Thank you for comments dated October 15, 2019 and November 6, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

October 15, 2019:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The

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Letter to Jessie Kekiwi-Aweau

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need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O,

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *My ohana on both sides Kaauamo and Kekiwi use the streams to feed our lo'i kalo (taro patches). We also use these streams for our rights to culturally gather and provide for our families.*

It is our right to have these God given waters to flow where it is naturally meant to flow with no DIVERSION to help create any disturbance in these East Maui streams.

Without these free flowing waters into it's rightful streams, the stream and ocean life can be greatly disturbed and will no longer be available for our future generations. You see we have been passed down from generation to generation the knowledge to care for our natural resources. Once this diversion disturbance takes place there will be no natural resources left for our future generations.

Greed is not the answer to this situation, but honesty and facts are. Take into consideration that diverting water from OUR East Maui streams will affect all our SMALL communities in the East end, and our natural resources and gathering rights will be limited.

We have been fighting these water issues FOREVER.

Thank you for taking the time in reading my letter.

Jessie Kekiwi-Aweau

Thank you for this opportunity to submit comments on this Draft EIS.

Response 2: We acknowledge your comments. With regards to taro farming, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License

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Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for taro were identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown in pages 1-19 to 1-23. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo'i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be

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minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in the included pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

With regards to cultural impacts, the CIA acknowledges that the Proposed Action may impact Native Hawaiian cultural resources and practices and provides for several recommendations to mitigate those impacts. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to ‘ōpae, ‘o‘opu, pūpūlo‘i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graiosa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water

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not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, enclosed as pages 4-239 to 4-252. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting

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of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything herein before granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

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With regards to the nearshore coastal environment, please note that the primary focus of the survey conducted for East Maui Irrigation Assessment of Streams and the Ocean (Appendix B) was to evaluate the fate of stream-delivered nutrients to nearshore marine habitats. The collected data presented in EIS Appendix B and summarized in Section 4.2.3 of the EIS suggest that the nutrient delivery from streams to the ocean is limited by the intense mixing processes that occur in the nearshore ocean in East Maui. Thus, if nutrient concentrations in the ocean do not change substantially, there is no pathway for fishing to be impacted, either negatively or otherwise.

However, one limitation of all studies for the East Maui streams is the incredible difficulty of access to most of the streams. The majority of streams are extremely steep with large waterfalls and slippery bedrock bottoms filled with unconsolidated boulders and cobble that may shift as they are stepped on. This makes travel up or down the stream channel extremely dangerous and difficult except in limited areas. Additionally, few trails exist along the streams and those that were utilized were slippery and dangerous, making carrying field sampling equipment problematic. Helicopter access was also limited and was primarily located on the beaches at stream mouths. As a result of the difficulty of access, specific field-based measurements of many segments within East Maui streams were not attempted. For the streams that were accessible, no estuaries (muliwai) were present in the stream systems examined for the East Maui Irrigation Assessment of Streams and the Ocean (Appendix B).

Moreover, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in the pages 4-78 to 4-83. The HSHEP model used to conduct the analysis of impacts of streamflow diversions on the habitat of native amphidromous stream animals also considers habitat within estuarine segments of Hawaiian streams. While the HSHEP specifically focuses on the eight native stream species of concern, the assumption is that positive habitat benefits for the low reach species (‘O‘opu naniha (*Stenogobius hawaiiensis*), ‘O‘opu akupa (*Eleotris sandvicensis*) and ‘Ōpae ‘oeha‘a (*Macrobrachium grandimanus*)) are likely to result in positive habitat benefits for other low reach and estuarine species.

The HSHEP model is capable of defining estuarine reaches as stream segments occurring below one-meter elevation. The results found very little estuarine habitats present in the East Maui stream that flow from the License Area. The HSHEP found that only five streams of the 33 subject to analysis, have the possibility of estuarine reach. For these five streams, three streams (Waiohue, Pi‘ina‘au, and Honomanū) are the most likely to have estuarine reaches and all three of these streams have either full or habitat flow restoration planned. Of the two streams that may have a small estuarine reaches, Pa‘akea will have connectivity flow restoration, while ‘O‘opuloa, as a non-petitioned stream, is not expected to have flow restoration. Thus overall, the majority of

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estuarine habitat related to the License Area streams will be either fully or partially restored under the Proposed Action.

The CWRM D&O, however, notes that a total of nine streams (one of which is considered a tributary to Pi'ina'au Stream) have estuarine reaches, four of which were noted by Trutta's HSHEP + aerial image review approach for identifying estuarine reaches. The streams included in the CWRM D&O are shown in Table 4-8 below along with their overlap with streams determined with the method used by Trutta as shown in pages 4-78 to 4-83. It should be noted that for purposes of the D&O, CWRM considered an estuary anywhere that the DLNR Division of Aquatic Resources (DLNR-DAR) conducted an estuary survey. This includes surveys conducted in bays and/or streams. The DLNR-DAR's methodology used for estuary surveys, unlike the HSHEP model, does not define the size or extent of an estuary. The DLNR-DAR surveys were conducted to look for the presence of fish near a stream mouth. The differences between the two methodologies provide some different outcomes.

Of the streams recognized by the CWRM D&O as having estuarine reaches, four streams (Makapipi, Waiohue, West Wailuāiki, and Pi'ina'au and its tributary Palauhulu) have full flow restoration ordered, and three streams (Kopiliula, East Wailuāiki, and Honomanū) have habitat flow restoration ordered under the CWRM D&O IIFS requirements. Based on these flow restoration requirements, the majority of estuarine habitat will be restored in these streams. The remaining two streams (Hanawī and Pa'akea) have connectivity flow restoration ordered. Pa'akea is a small stream, and the connectivity flow will improve freshwater input to the estuarine stream segment, although not as much as in the other streams. Therefore, similar to the combined classification approach used by the HSHEP Model, the majority of estuarine habitat based on the estuaries identified in the CWRM D&O will be restored by the flow restoration ordered under the CWRM D&O as shown in pages 4-78 to 4-83.

Moreover, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The

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analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai‘i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

November 6, 2019:

Comment 3: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 3: As noted in Response #1 above, please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important

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Agricultural Lands (IAL), as are approximately 22,000 acres of the applicable Central Maui fields.

Comment 4: *We the farmers of East Maui have been fighting for OUR waters in the streams to be released back to our streams at a 100% stream flow.*

We have been in this fight for a long time and for two generations long (I am third generation, my kids are fourth generation, and my grandkids are fifth generation). This is heart breaking to see that this fight for OUR waters continues as I seen my Tutu and my Dad pass while this fight continues.

Response 4: We acknowledge your comments and understand that you have been fighting for full restoration of stream flow in East Maui. As noted in Response #1 above, For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 5: *We have seen our water at its fullest, and then seen it slowly disappearing, then GONE. WE SEEN OUR STREAM BEDS EMPTY, DRIED UP, WITH NO STREAM LIFE IN IT.*

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Without water our stream animals cannot thrive, and also our ocean animals that come up into the streams to spawn cannot do their circle of life routine.

Response 5: We acknowledge your comments. Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe‘e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a

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discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown in pages 4-331 to 4-336.

Please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

However, please note that the above has been revised as shown in pages 4-61 to 4-62 of the Final EIS. The above excerpt and the updated text in pages 4-61 to 4-62 present that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See 4-61 to 4-62 of the Final EIS.

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With regards to ocean life, as noted in Response #3 above, Section 4.2.3 of the Final EIS has been revised to show that there are very little estuarine habitats present in the East Maui streams that flow from the License Area as shown in pages 4-78 to 4-83.

Comment 6: *Without water in our streams (streamflow at 100%), our kalo cannot get the nutrients it needs to help us (as farmers, hunters, and gatherers) live a sustainable life. Disease and rot tends to harm our kalo (taro), which then make our kalo not edible or not worth selling.*

Response 6: We acknowledge your comments. As noted in Response #1 above, For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown in the included pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 7: *Without water in our streams our stream life die, such as the ‘opae, hihiwai, ‘o‘opū, prawn, ocean life such as ‘aholehole, kumu, and mullet won't be able to use the streams to spawn. Forest animals won't be able to drink water and they would need to come close to homes and find water.*

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Response 7: We acknowledge your comments. Regarding stream life, as noted in Response #6 above, please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts, which include 'opae, hīhīwai, and 'o'opu and other native amphidromous stream animals.

Regarding your comment about forest animals, Appendix C and Section 4.4 of the Draft EIS specifically addresses the flora and fauna considerations of the Proposed Action and alternatives.

Comment 8: *It has been disturbing seeing our waterfalls disappear because streamflow is being diverted. The water belongs to the people of the area where the stream flows naturally. It is called stealing when one takes something that don't belong to them.*

So I am calling the State, County, and all who is involved in this DIVERSIONS of our water, THIEVES.

Mind you, I have ohana that work for these organizations, and understand that they have to do what they have to do to support their family, but WE AS TARO FARMERS HAVE TO DO WHAT WE HAVE TO DO TOO. SO IN ORDER FOR US TO CONTINUE FARMING AS TARO FARMERS, WE NEED OUR WATER TO BE RESTORED, RETURNED, AND KEPT IN OUR STREAM BEDS FLOWING AT A HUNDRED PERCENT WITH NO DIVERSIONS.

Response 8: We acknowledge your comments. As noted in Response #1 above, For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O "will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ..." (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming.

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The above discussion has been added to Section 4.7.4 of the Final EIS as shown in the included pages 4-288 to 4-293.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development –Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: shockleyjr@everyactioncustom.com on behalf of [John Rita Shockley](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 7:24:23 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Sharing water does NOT mean GRABBING water. The issue of public access to public land is something important to residents and visitors who should have free access to recreation. Free Access requires responsibility of the people who access the land. Permits should be free but rules about keeping the aina pristine need to be stated and then enforced.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
John Rita Shockley
92 -5076 Limukele St Kapolei, HI 96707-2357
shockleyjr@gmail.com



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10238-04
September 3, 2021

John Rita Shockley
92 -5076 Limukele St
Kapolei, HI 96707-2357
shockleyjr@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Shockley:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not

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needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *Sharing water does NOT mean GRABBING water. The issue of public access to public land is something important to residents and visitors who should have free access to recreation. Free Access requires responsibility of the people who access the land. Permits should be free but rules about keeping the aina pristine need to be stated and then enforced.*

Thank you for this opportunity to submit comments on this Draft EIS

Responses 2: We acknowledge your comments. Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

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Hence, the State would presumably manage public access to areas that are not within the License Area. Please also see Response #55 regarding the revised License Area under the most recent revocable permits and projections related to the geographical extent of the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown in pages 3-21 to 3-24 to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding impacts to the areas that would allow for more public access. Moreover, impacts of the Modified Lease Area alternative are discussed in Section 3.4 of the EIS (Comparative Evaluation of Reasonable Alternatives) against different environmental resource categories.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: jonoknight@everyactioncustom.com on behalf of [Jono Knight](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 10:29:20 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui.

Enough is enough!

Diverting East Maui streams like sugarcane used to do is not needed by agriculture in central Maui. We should concentrate on ensuring the restoration of East Maui streams, making sure they have a healthy flow of water mauka to makai so ancient Hawaiian ecosystems can flourish again for our children and future generations. Please restore the aina before stealing unneeded water for profit.

Mahalo for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jono Knight
420 One St Kahului, HI 96732-1340
jonoknight@yahoo.com

From: jonoknight@everyactioncustom.com on behalf of [Jono Knight](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 20, 2019 6:47:33 PM

Dear Mr. Matsukawa,

Originally no streams were diverted as they are now, so the "baseline" is no stream diversion.

We should be striving to return the land, streams and ocean to how it was, allowing native & indigenous aquatic species to return to streams. Let farmers only take what water they truly require to farm and no more.

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Please return all streams their original flow. We will all benefit from this.

Mahalo for this opportunity to submit comments on this Draft EIS.

Sincerely,
Jono Knight
420 One St Kahului, HI 96732-1340
jonoknight@yahoo.com



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10238-04
September 3, 2021

Jono Knight
420 One St
Kahului, HI 96732-1340
jonoknight@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Knight:

Thank you for comments dated October 3, 2019 and October 20, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

October 3, 2019:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui.*

Enough is enough!

Response 1: We acknowledge your comments and that you are opposed to the Proposed Action.

Comment 2: *Diverting East Maui streams like sugarcane used to do is not needed by agriculture in central Maui. We should concentrate on ensuring the restoration of East Maui streams, making sure they have a healthy flow of water mauka to makai so ancient Hawaiian ecosystems can flourish again for our children and future generations. Please restore the aina before stealing unneeded water for profit.*

Mahalo for this opportunity to submit comments on this Draft EIS.

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Response 2: We acknowledge your comments. Please note that under the Proposed Action East Maui stream diversion is anticipated to be significantly less than they were during historical sugarcane operations. As discussed in Draft EIS Section 2.1.2 (East Maui/License Area) and 2.1.4 (Central Maui Field System), the long-term average delivery of water by the EMI Aqueduct System up until 1986 had been approximately 165 mgd (prior to any use of water by the MDWS or HC&S on the agricultural fields). This measurement was taken at Māliko Gulch. As discussed in Section 2.1.2 of the Draft EIS, the amount of water that could be diverted from the License Area under the Proposed Action is approximately 87.95 mgd.

Regarding your comment about having flow mauka to makai, Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au,

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Wailuānui, Honomanū, Waikamoi, Nua‘ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā‘ula, Pa‘akea, Pua‘aka‘a, Puohokamoa, Ha‘ipua‘ena, Nua‘ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

October 20, 2019:

Comment 3: *Originally no streams were diverted as they are now, so the "baseline" is no stream diversion.*

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We should be striving to return the land, streams and ocean to how it was, allowing native & indigenous aquatic species to return to streams. Let farmers only take what water they truly require to farm and no more.

Response 3: We acknowledge your comments. With regards to your comment about the ‘baseline’, the use of the upper and lower boundaries applied to the HSHEP model for the assessment of impacts to the native amphidromous stream species was used as the baseline to assess impacts. Specifically, Section 4.2.1 of the Draft EIS states:

Baseline Condition — Full Diversion

The lower boundary for the HSHEP model was full diversion by the EMI Aqueduct System in its current configuration as existed under sugar cultivation, which was the prevailing conditions for nearly 100 years. (Trutta, p. 41, 2019) The Full Diversion scenario assumes that all the diversions in the EMI Aqueduct System are fully open or diverting 100% of available low flows, roughly analogous to the stream's baseflow. The diversions in the EMI Aqueduct System were built to capture 100% of normal low flows plus some small amount of storm runoff. Hawaiian streams are "flashy", meaning discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions. When low flow conditions persist and water needs call for all the low flow to be diverted, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production. (Trutta, p. 55-56, 2019) Under Full Diversion conditions, approximately 46% of the total HU remained; or conversely, Full Diversion conditions reduced the number of HU by approximately 54%.

The lower boundary reflects the maximum impact or maximum amount of habitat lost because of the diversions. None of the proposed actions in the Draft EIS seek to increase diversion amounts over the amount of water diverted at the peak of sugar cane production. The modeled assumption under the full diversion scenario is 100% diversion of “base or normal low” streamflow at all diversions within the system. Thus, all habitat, entrainment, and barrier impacts were set to their maximum (greatest negative impact on species habitat) at all diversions. We acknowledge that Full Diversion resulted in more than half of all stream habitat being eliminated from the East Maui streams as stated,

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Under Full Diversion conditions, approximately 46% of the total HU remained; or conversely, Full Diversion conditions reduced the number of HU by approximately 54%.

The use of the Full Diversion Conditions is also a historically coherent position as it reflects the conditions that were existing in East Maui streams for much of the past hundred years. Not considering diversion conditions under sugar cane agriculture seems disingenuous as it does not provide any context to a very well-known historical condition.

The lower boundary described by the Full Diversion Conditions is in contrast with the upper boundary as described by the Natural Condition. As in the report (Trutta, p56),

Natural Condition: This was the baseline comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals. This was the maximum available habitat units predicted.

This is also a coherent position as it provides context to the best conditions possible for native species. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat for native stream species.

The combination of the lower and upper bounds provide the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as by definition the changes must fall somewhere between 100% diversion and 0% diversion.

The two scenarios presented, the Proposed Action compliant with the CWRM D&O (Trutta's 2018 IIFS) and No Action Alternative (30% remaining flow diversion) are examples of how different flow restoration scenarios result in different amounts of habitat restored. The HSHEP model is used to quantify these differences based on flow restoration changes at specific diversions. This is exactly how impact assessment should be done. The HSHEP follows a logical approach and systematically addresses on-the-ground conditions.

Regarding your comment about farms, as discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke'anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional

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taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown in pages 4-288 to 4-293.

Comment 4: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Please return all streams their original flow. We will all benefit from this.

Mahalo for this opportunity to submit comments on this Draft EIS.

Response 4: We acknowledge your comments. As discussed in Response #2 above, note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: unsub@everyactioncustom.com on behalf of [Joseph Kohn MD](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 13, 2019 7:45:31 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

This is an outrage! Stop corporate water theft forever. There are alternatives, such as catchment and desalination. We owe A&B nothing on top of their already ill gotten gains and crimes against The Kingdom and humanity! You will be held accountable for your complicity. Aloha 'Aina! Malama Pono!

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Joseph Kohn MD
Wailuku, HI 96793
unsub@WeAreOne.cc



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10238-04
September 3, 2021

Joseph Kohn M.D.
Wailuku, HI 96793
unsub@WeAreOne.cc

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Joseph Kohn M.D.:

Thank you for comments dated October 13, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *This is an outrage! Stop corporate water theft forever. There are alternatives, such as catchment and desalination. We owe A&B nothing on top of their already ill gotten gains and crimes against The Kingdom and humanity! You will be held accountable for your complicity. Aloha 'Āina! Mālama Pono!*

Response 2: We acknowledge your comments. With respect to your comment encouraging desalination, please note that Chapter 3 of the Final EIS has been updated to include Section 3.1.1.4 which analyzes the option of desalination and its environmental impacts, as shown in pages 3-14 to 3-19. As shown in the discussion in pages 3-14 to 3-19, desalination of the existing Mahi Pono brackish water wells would yield approximately half the amount of brackish water, about 50 mgd. Furthermore, desalination is not a cheaper option than diverting surface water resources and has other negative environmental impacts such as impacts to regional hydrologic, geologic, and biological resources. Hydrological resources would be assumed to experience the greatest impacts due to withdrawals and injections greatly influencing the regional water sources. Highly in-depth hydrogeological study will need to be done within the area of the proposed injection wells due to the fact that the injection wells must discharge the brine into a confined aquifer/space at least ¼ mile under any drinking water aquifers so as not to contaminate any other freshwater sources. Due to the increased restrictions and preventative measures that are required under Class I injection wells (Class I is the type of injection well associated with industrial waste), there would not be a need for a “no-farming zone” since, under construction regulations for a Class I well, extreme preventative measures are required in order to prevent harmful water from infiltrating drinking water sources in the event of a spill/leakage. Additionally, the harmful discharge from the desalination plant will be pumped extremely deep underground, minimizing any effect to surrounding soils. Nevertheless, a buffer area between the injection wells and the agricultural lands would be recommended. Please also note that for

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operational purposes, the tunnels and diversions of the EMI Aqueduct System are not in need of significant repair as you state.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kumasong@everyactioncustom.com on behalf of [Karen Kirschling](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 7:58:22 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui.

The Draft EIS assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities

The DEIS does not talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. These diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species; nor does it include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.

The DEIS should also give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Karen Kirschling
San Francisco, CA 94117
kumasong@excite.com



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September 3, 2021

Karen Kirschling
San Francisco, CA 94117
kumasong@excite.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Kirschling:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui.*

The Draft EIS assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities

Response 1: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users.

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The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko‘olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown in pages 3-49 to 3-80. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 2: *The DEIS does not talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated*

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that all of the water will be diverted from the streams 60% of the time. These diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.

Response 2: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided in pages 4-61 to 4-67.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of

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those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 3: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species; nor does it include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 3: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the Final EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown in pages 2-2 to 2-4.

Comment 4: *The DEIS should also give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

Response 4: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the

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establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80 of the Final EIS, for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 5: *Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 5: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural

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integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kau@everyactioncustom.com on behalf of [Kau'i Pratt-Aquino](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 12:39:03 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. The diversions have nearly destroyed these farming communities who have waited for years to have their water returned. Do not abdicate your fiduciary duty to manage public water to a private entity who has not justified it's need for the water.

That is a violation of your trust obligations. I am disappointed to also learn that Chris Yuen made a recommendation to increase water flow without A&B providing a justification for it. Water is life. Save these communities by being better stewards of this pressure resource in accordance with the state's constitutional mandate.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kau'i Pratt-Aquino
45 -735 Wainana St Kaneohe, HI 96744-2843
kau@prattlawhi.com

From: kai@everyactioncustom.com on behalf of [Kai Pratt-Aquino](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 4:16:36 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Please stop abdicating the state's trust obligation to a private entity who has not justified its use for the water at the detriment of communities who are being destroyed by the diversions.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kai Pratt-Aquino
45 -735 Wainana St Kaneohe, HI 96744-2843
kai@prattlawhi.com



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Kau'i Pratt-Aquino
 45 -735 Wainana St
 Kaneohe, HI 96744-2843
kau@prattlawhi.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Kau'i Pratt-Aquino:

Thank you for comments dated October 19, 2019 and November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

October 19, 2019:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The diversions have nearly destroyed these farming communities who have waited for years to have their water returned. Do not abdicate your fiduciary duty to manage public water to a private entity who has not justified it's need for the water.*

Response 2: We acknowledge your comments. Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter

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3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS, see pages 4-331 to 4-336 of the EIS.

Regarding your comment about justifying the need for water, the representations made by Mahi Pono about its desire to be both transparent and to use only as much water as it needs to implement its farm plan are accurate. The Draft EIS is extremely detailed and provides a large amount of relevant information in an effort to meet that commitment to transparency. The Draft EIS also contains the Mahi Pono farm plan that shows the planned crops and the corresponding demand for water. This is true to Mahi Pono's commitment to using only as much water as it needs. Moreover, it should be noted Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as on pages 2-25 to 2-27 of the EIS.

Comment 3: *That is a violation of your trust obligations. I am disappointed to also learn that Chris Yuen made a recommendation to increase water flow without A&B providing a justification for it. Water is life. Save these communities by being better stewards of this pressure resource in accordance with the state's constitutional mandate.*

Thank you for this opportunity to submit comments on this Draft EIS.

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Response 3: We acknowledge your comments. Regarding your comment about the trust obligations, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27 of the EIS. Please note that decisions that Chris Yuen have made are not within the scope of this EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

November 1, 2019:

Comment 4: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 4: We acknowledge your comments. As discussed in Response #1 above, the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject

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to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

Comment 5: *Please stop abdicating the state's trust obligation to a private entity who has not justified its use for the water at the detriment of communities who are being destroyed by the diversions.*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 5: Regarding your comment about justifying the need for water, as discussed in Response #2 above, the representations made by Mahi Pono about its desire to be both transparent and to use only as much water as it needs to implement its farm plan are accurate. The Draft EIS is extremely detailed and provides a large amount of relevant information in an effort to meet that commitment to transparency. The Draft EIS also contains the Mahi Pono farm plan that shows the planned crops and the corresponding demand for water. This is true to Mahi Pono's commitment to using only as much water as it needs. Moreover, it should be noted Mahi Pono expects to invest over \$20 million to increase the efficiency of its Central Maui Field Irrigation System (i.e., the infrastructure that distributes water from Kamole-Weir to the agricultural fields and also within those fields). As part of this upgrade, Mahi Pono's irrigation engineering team is also implementing high-efficiency irrigation systems. The new irrigation systems will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycling and re-using all water used in Mahi Pono's processing plants; and (3) integrating various live technology feeds to constantly monitor plant, soil, and tree health. Please note that this discussion has been added to Section 2.1.4 of the Final EIS as shown on pages 2-25 to 2-27 of the EIS.

Regarding your comment about community impacts, as it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams

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in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: hawaiicondo@everyactioncustom.com on behalf of [Kim Jorgensen](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 3:47:41 AM

Dear Mr. Matsukawa,

Alexander and Baldwin's proposal to further divert the streams of East Maui is outright theft and greed. Enough is enough!

East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kim Jorgensen
Honolulu, HI 96815
hawaiicondo@yahoo.com

From: hawaiiicondo@everyactioncustom.com on behalf of [Kim Jorgensen](#)
To: [Public Comment](#)
Subject: Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 8, 2019 6:41:53 PM

Dear Mr. Matsukawa,

I strongly oppose Alexander and Baldwin's proposal to further divert the streams of East Maui.

Enough is enough! A&B have controlled the islands and their natural resources for too many decades. It is pure greed.

East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for your kind consideration.

Sincerely,
Kim Jorgensen
Honolulu, HI 96815
hawaiiicondo@yahoo.com

From: hawaiiicondo@everyactioncustom.com on behalf of [Kim Jorgensen](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 12:59:37 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui.

Enough is enough!

East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kim Jorgensen
Honolulu, HI 96815
hawaiiicondo@yahoo.com



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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September 3, 2021

Kim Jorgensen
Honolulu, HI 96815
hawaiiicondo@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Jorgensen:

Thank you for comments dated October 19, 2019 and November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Alexander and Baldwin’s proposal to further divert the streams of East Maui is outright theft and greed. Enough is enough!*

East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui.*

Enough is enough!

East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Response 2: As previously stated in Response 1, the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

Comment 3: *I strongly oppose Alexander and Baldwin's proposal to further divert the streams of East Maui.*

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Response 3: As previously stated in Response 1, the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: kp@everyactioncustom.com on behalf of [kristine.peterson](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 13, 2019 1:32:06 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The water still hasn't been restored that has been promised. Promises are not being kept and we are still waiting. Before any permits are approved streams must be restored. Not after!

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
kristine peterson
132 Maalaea Rd Wailuku, HI 96793-5933
kp@knightg.com



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September 3, 2021

Kristine Peterson
132 Maalaea Rd
Wailuku, HI 96793-5933
kp@knightg.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Kristine Peterson:

Thank you for comments dated October 13, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through

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several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single

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coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The water still hasn't been restored that has been promised. Promises are not being kept and we are still waiting. Before any permits are approved streams must be restored. Not after!*

Response 2: The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kyle.nakanelua@everyactioncustom.com on behalf of [Kyle Nakanelua](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 9, 2019 1:10:40 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The state should not allow long-term licenses for diversion of waters, which are a public trust resource.

-A&B has not been a good steward, neither of the lands it leased nor the waters it diverted.

-No commercial entity should be allowed to divert water.

- All of the infrastructure -- the cement, steel etc. dams, gates, tunnels, flumes, pipes, etc. -- for the East Maui diversions for the streams that have been fully restored, restored to 90% stream biota, or restored for connectivity of stream biota should be removed.

-The lands and streams should be restored to the same pristine condition they were in before these were constructed or installed.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Kyle Nakanelua
2795 Kauhikoalani Pl Haiku, HI 96708-5896
kyle.nakanelua@gmail.com



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Kyle Nakanelua
2795 Kauhikoalani Pl
Haiku, HI 96708-5896
kyle.nakanelua@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Nakanelua :

Thank you for comments dated October 9, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The state should not allow long-term licenses for diversion of waters, which are a public trust resource.*

Response 2: We acknowledge your comments. Please note that the State has the authority to issue a water lease for a 65-year term. With regards to the public trust, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27 of the EIS.

Comment 3: *A&B has not been a good steward, neither of the lands it leased nor the waters it diverted.*

Response 3: We respectfully disagree. As discussed in Section 2.1 of the Draft EIS, A&B was a founding member of the East Maui Watershed Partnership (EMWP), which was the first watershed partnership in the State of Hawai'i and which served as a model for other watershed partnerships throughout the State. In reviewing existing watershed management plans in general, however, DLNR has recently determined that some of the existing watershed plans are not always directly correlated to the water lease area and some plans are old and outdated. In certain places, new threats to watershed health are not addressed in existing watershed plans. Additionally, DLNR determined that estimated budgets in such existing plans may not reflect the current cost of management if the plan is over 5 years old. As such, DLNR will work with proposed water lessees to determine if any existing plan meets the minimum content requirements and sufficiently addresses the protection of watershed forests and fresh water resources in the License Area. If it does not, DLNR will work with the lessee to determine the specific actions needed and jointly develop a new plan or update the existing plan as noted in

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Response #71 above. It should be noted that the existence of a watershed management plan does not absolve a water lessees' duty to help with the implementation of management actions. A lessee must provide DLNR proof that it is already contributing to the protection of the watershed, and membership in a Watershed Partnership may not fulfill the requirement of implementation.

DLNR and a water lessee will jointly develop a watershed management plan that cites existing management plans, meets the minimum content requirements, and outlines what reasonable management practices are needed for the water lease area and the current estimated costs associated with implementation. The new plan will be specific to the watershed(s) associated with the lease (the sources that feed the lease area) and management will be based on current estimated costs. One of the required elements of a watershed management plan is a budget, which entails a) an estimate of costs and categories of expenditures needed; and b) potential sources of funding for implementing the actions. See pages 2-2 to 2-4 of the EIS.

Comment 4: *No commercial entity should be allowed to divert water.*

Response 4: We acknowledge your comments. However, please note that the BLNR authorizes the Water Lease.

Comment 5: *All of the infrastructure -- the cement, steel etc. dams, gates, tunnels, flumes, pipes, etc. -- for the East Maui diversions for the streams that have been fully restored, restored to 90% stream biota, or restored for connectivity of stream biota should be removed.*

Response 5: We respectfully disagree with your comments. Upon making the voluntary commitment to permanently restore the stream flows in the "taro streams", EMI returned approximately 90-95% of the natural flow of the streams—all that could be done by adjusting (opening or closing) the diversion gates. The final 5-10% to achieve complete restoration requires modifications to diversions, essentially construction projects, thus triggering various permitting processes that continue to be pursued.

Potential impacts from the abandonment of structures and equipment as it relates to native stream habitat was assessed and discussed in Appendix A, the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report.

The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

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The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

However, please note that generally speaking, the complete physical removal of a diversion structure is not required for eliminating the impacts of the diversion on the native amphidromous stream animals. As long as the diversion does not remove water from the stream, does not change the natural path of the water, or create a barrier to movement, then the physical structure will have a negligible impact on native species habitat at best. The presence of cement or wood near or partially within the stream channel is not inherently bad for stream animals. Conversely, meeting the instream flow standard at a specified downstream location does not guarantee that no impacts will occur. In a situation where changes to a diversion result in the water flowing into the diversion and back to the stream from another location in the diversion ditch, impacts are likely to continue to occur. This is true even if 100% of the stream volume is returned as the pathway may still entrain or divert animals from the natural stream channel.

The two primary conditions where diversion structures could impact native stream species are structures where diversion and ditch water still comingle or structures that create a barrier to upstream migration. A diversion structure could also impact native stream animals as they move upstream if it creates an unnatural barrier. If no wetted pathway exists, upstream passage will be stopped.

Altering the natural streamflow could have a negative impact on the stream and stream animal habitat. Removal of portions of the diversion structure that cause flow restrictions, passage

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barriers, or unnatural impounding of the water (primarily the diversion dam) would remove these negative impacts. While complete elimination of the structure is one way to accomplish the goal, complete removal is not required to eliminate alterations to streamflow patterns.

In summary, complete removal of all diversion structure is not required for mitigation or elimination of instream impacts to native stream animal habitat, but exact structure modification needs to be addressed on a case-by-case basis as anticipated under the CWRM D&O, to prevent or mitigate impacts.

Th above is discussed in more detail in Section 4.2.1 of the Final EIS as shown on pages 4-56 to 4-67 of the EIS.

Comment 6: *The lands and streams should be restored to the same pristine condition they were in before these were constructed or installed.*

Thank you for this opportunity to submit comments on this Draft EIS.

Response 6: We acknowledge your comments. As discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: laauaae@everyactioncustom.com on behalf of [Lauae Lind](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 12, 2019 5:27:41 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

East Maui watersheds are being overused and abused. It's time to stop this corruption and save our streams/wildlife that will go extinct if diversions continue.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lauae Lind
Hana, HI 96713
laauaae@icloud.com



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September 3, 2021

Lauae Lind
Hana, HI 96713
laauaae@icloud.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Lauae Lind:

Thank you for comments dated October 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *East Maui watersheds are being overused and abused. It's time to stop this corruption and save our streams/wildlife that will go extinct if diversions continue.*

Response 2: We acknowledge your comments. With respect to the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai'i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The

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requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS, see pages 2-2 to 2-4 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: laurag@everyactioncustom.com on behalf of [Laura Gray](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 6, 2019 2:21:00 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Laura Gray
PO Box 536 Hauula, HI 96717-0536
laurag@divefish.com

From: laurag@everyactioncustom.com on behalf of [Laura Gray](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 10, 2019 1:01:29 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. We all understand how important it is to restore natural flow to channelized streams to restore all aspects of environmental health from the mountains to the sea. That is why Kam Schools/Bishop Estate was forced to restore Punalu'u Valley (where I live) after years of degradation from water diversion. Please do not shirk your duty to protect and restore our public water.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Laura Gray
PO Box 536 Hauula, HI 96717-0536
laurag@divefish.com



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10238-04
September 3, 2021

Laura Gray
PO Box 536
Hauula, HI 96717-0536
laurag@divefish.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Laura Gray:

Thank you for comments dated October 6, 2019 and October 10, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 2: As noted in Response #1 above, note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

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Comment 3: *We all understand how important it is to restore natural flow to channelized streams to restore all aspects of environmental health from the mountains to the sea. That is why Kam Schools/Bishop Estate was forced to restore Punalu'u Valley (where I live) after years of degradation from water diversion. Please do not shirk your duty to protect and restore our public water.*

Response 4: Your comments in response to the Proposed Action are acknowledged. Outside of the EIS process for the Proposed Action, it should be noted that several of the East Maui streams were ordered for restoration under the CWRM D&O which was issued in June 2018. A description of the proceedings at CWRM and the restoration orders is provided in Section 1.3.4 of the EIS. The Proposed Action assumes full compliance with the CWRM D&O.

Regarding assessment of impacts from stream restoration, an Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model, prepared by Trutta Environmental Solutions, LLC (Trutta Report) included as Appendix A utilized the HSHEP model to quantify the impacts of flow restoration on native stream animal habitat to determine an appropriate balance between instream and offstream water uses. Impacts to stream habitats and native amphidromous stream species, are analyzed in Section 4.2.1 and Appendix A of the EIS. Impacts to coastal waters and nearshore environments are analyzed in Section 4.2.3 and Appendix B (East Maui Irrigation Assessment of Streams and the Ocean Water Chemistry) of the EIS. Impacts to terrestrial flora and fauna, including threatened and endangered species, are analyzed in section 4.4 and Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS, see pages 2-2 to 2-4 of the EIS

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Your comment regarding Punalu'u Valley is outside the scope of the EIS. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: lalaj@everyactioncustom.com on behalf of [Laura Johnson](#)
To: [Public Comment](#)
Subject: Alexander and Baldwin's Draft EIS
Date: Thursday, October 10, 2019 2:27:07 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

My ancestors have been from this aina for many generations for the purpose of growing kalo and to enhance the ecosystem of East Maui. How can a "baseline condition" be created when it was naturally created by kanaka of the area (makaanana) who didn't base it on an agenda for a typical project that goes corporate. It was a project to feed the people to live. The baseline conditions that were physically, chemically, biologically, socially, and culturally proposed 100 years ago served for a purpose that was not for our kanaka people. It was created for an entity that benefited financially and this will only be another duplicate of that system. So no diversion so the ecosystems of East Maui will thrive just as the people of that area like it was more than 100's of years ago.

Thank you for this opportunity to submit comments on this Draft EIS.

Mahalo,

Laura (Lala) Johnson
Kanaka Maoli

Sincerely,
Laura Johnson
631 Kalakaua St Wailuku, HI 96793-1305
lalaj@flex.com



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10238-04
September 3, 2021

Laura Johnson
631 Kalakaua St
Wailuku, HI 96793-1305
lalaj@flex.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Johnson:

Thank you for comments dated October 10, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the

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Draft EIS and the technical studies, it is estimated that the maximum amount of surface water available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80 of the EIS. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *My ancestors have been from this aina for many generations for the purpose of growing kalo and to enhance the ecosystem of East Maui. How can a "baseline condition" be created when it was naturally created by kanaka of the area (makaanana) who didn't base it on an agenda for a typical project that goes corporate. It was a project to feed the people to live. The baseline conditions that were physically, chemically, biologically, socially, and culturally proposed 100 years ago served for a purpose that was not for our kanaka people. It was created for an entity that benefited financially and this will only be another duplicate of that system. So no diversion so the ecosystems of East Maui will thrive just as the people of that area like it was more than 100's of years ago.*

Response 3: We acknowledge your comments. Please note that the use of the upper and lower boundaries applied to the HSHEP model for the assessment of impacts to the native amphidromous stream species were correct. As noted in Section 4.2.1 of the Draft EIS:

Baseline Condition — Full Diversion

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The lower boundary for the HSHEP model was full diversion by the EMI Aqueduct System in its current configuration as existed under sugar cultivation, which was the prevailing conditions for nearly 100 years. (Trutta, p. 41, 2019) The Full Diversion scenario assumes that all the diversions in the EMI Aqueduct System are fully open or diverting 100% of available low flows, roughly analogous to the stream's baseflow. The diversions in the EMI Aqueduct System were built to capture 100% of normal low flows plus some small amount of storm runoff. Hawaiian streams are "flashy", meaning discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions. When low flow conditions persist and water needs call for all the low flow to be diverted, the streams can be dewatered below the diversions resulting in negative impacts on species habitat and passage. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production. (Trutta, p. 55-56, 2019) Under Full Diversion conditions, approximately 46% of the total HU remained; or conversely, Full Diversion conditions reduced the number of HU by approximately 54%.

The use of the Full Diversion Condition as the lower boundary to amount of available habitat is completely correct. The lower boundary reflects the maximum impact or maximum amount of habitat lost because of the diversions. None of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugar cane production. The modeled assumption under the full diversion scenario is 100% diversion of "base or normal low" streamflow at all diversions within the system. Thus, all habitat, entrainment, and barrier impacts were set to their maximum (greatest negative impact on species habitat) at all diversions. We acknowledge that Full Diversion resulted in more than half of all stream habitat being eliminated from the East Maui Streams as stated,

Under Full Diversion conditions, approximately 46% of the total HU remained; or conversely, Full Diversion conditions reduced the number of HU by approximately 54%.

The use of the Full Diversion Conditions is also a historically coherent position as it reflects the conditions that were existing in East Maui streams for much of the past hundred years. Not considering diversion conditions under sugar cane agriculture seems disingenuous as it does not provide any context to a very well-known historical condition.

The lower boundary described by the Full Diversion Conditions is in contrast with the upper boundary as described by the Natural Condition. As in the report (Trutta, p56),

Natural Condition: This was the baseline comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on

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passage or entrainment of animals. This was the maximum available habitat units predicted.

This is also a coherent position as it provides context to the best conditions possible for native species. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat for native stream species.

The combination of the lower and upper bounds provide the range at which we would expect changes to the diversions to fall within and provides a way to comparatively discuss different flow restoration scenarios as by definition the changes must fall somewhere between 100% diversion and 0% diversion.

The two scenarios presented, the Proposed Action compliant with the CWRM D&O (Trutta's 2018 IIFS) and No Action Alternative (30% remaining flow diversion) are examples of how different flow restoration scenarios result in different amounts of habitat restored. The HSHEP model is used to quantify these differences based on flow restoration changes at specific diversions. This is exactly how impact assessment should be done. The HSHEP follows a logical approach and systematically addresses on-the-ground conditions.

Moreover, several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes the present composition of the flora and fauna resources in the License Area that are a result of

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human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS, see pages 4-331 to 4-336 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: lehuas.kokua@everyactioncustom.com on behalf of [Lehua Slater](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 10:52:44 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

East Maui streams are **STOLEN** from the local farmers and residence of agricultural land. Our family land has a stream that has been dried out and water stolen for over 15 years now along with hundreds of other Hana residents, agricultural and taro farmers. The lack of natural flow severely diminishes the diversity and local sustainability for food which would contribute and sustain local economic growth and caters only to a monopolized corporate takeover of what is a public right. Please do what is right for the people and longevity of the island.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Lehua Slater
Haiku, HI 96708
lehuas.kokua@gmail.com



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10238-04
September 3, 2021

Lehua Slater
Haiku, HI 96708
lehuas.kokua@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Lehua Slater:

Thank you for comments dated October 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *East Maui streams are STOLEN from the local farmers and residence of agricultural land.*

Response 2: As discussed in Section 4.7.4 of the EIS, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Truck farms in East Maui (from the Honopou to Nāhiku portion of the License Area), which includes farms areas using water from the streams not subject the CWRM D&O, are assumed to cover about 45 acres by 2030 based on about 80% of the estimated 55 acres in taro. In effect, 10 acres were added to the truck-crop acreage identified in the CWRM D&O in order to account for (1) the possibility that CWRM D&O may have missed some farm areas that would be feasible to cultivate, and (2) an increase in taro farming could result in more truck farming by taro farmers who supplement their income by using flow-through water to irrigate other crops. This additional discussion, including information on the historical and future agricultural uses, has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293.

Comment 3: *Our family land has a stream that has been dried out and water stolen for over 15 years now along with hundreds of other Hana residents, agricultural and taro farmers. The lack of natural flow severely diminishes the diversity and local sustainability for food which would*

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contribute and sustain local economic growth and caters only to a monopolized corporate takeover of what is a public right.

Please do what is right for the people and longevity of the island.

Response 3: Please note that you do not offer any specificity to as what stream you are referring to, therefore we cannot provide you with a specific response. However, none of the streams to be diverted under the Proposed Action or historically diverted by the EMI Aqueduct System are within the Hāna region.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: coonit@everyactioncustom.com on behalf of [Leigh Emerson Smith](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, October 3, 2019 2:14:26 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

By all appearances, this request from A&B is nothing more than greed. We must stop endless tinkering with nature, upon which ALL life depends.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Leigh Emerson Smith
5864 SW 76th St South Miami, FL 33143-5402
coonit@aol.com

From: coonit@everyactioncustom.com on behalf of [Leigh Emerson Smith](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 3:23:42 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

We can only shake our heads at the recent actions the Board of Land and Natural Resources has taken to further enable the pillage of nature, upon which all life depends.

We are extremely disappointed in how the BLNR has abdicated its responsibility to the public to protect our natural and cultural resources.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Leigh Emerson Smith
5864 SW 76th St South Miami, FL 33143-5402
coonit@aol.com



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September 3, 2021

Leigh Emerson Smith
5864 SW 76th St
South Miami, FL 33143-5402
coonit@aol.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Leigh Emerson Smith:

Thank you for comments dated October 3, 2019 and October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through

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several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *By all appearances, this request from A&B is nothing more than greed. We must stop endless tinkering with nature, upon which ALL life depends*

Response 2: We acknowledge your comments. Please note that as discussed in Response #1 above, the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS.

Comment 3: *We can only shake our heads at the recent actions the Board of Land and Natural Resources has taken to further enable the pillage of nature, upon which all life depends.*

Response 3: Your comments about the recent actions of the BLNR are unclear therefore we cannot offer you a specific response. However, please note that the scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 4: *We are extremely disappointed in how the BLNR has abdicated its responsibility to the public to protect our natural and cultural resources.*

Response 4: We acknowledge your comments. The dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B’s 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a

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new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27 of the EIS.

Moreover, there are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: elsie4444@everyactioncustom.com on behalf of [Linda Cahill](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 11, 2019 7:24:30 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

You have stolen native waters long enough!

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Linda Cahill
902 NE 72nd St Seattle, WA 98115-5639
elsie4444@yahoo.com



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10238-04
September 3, 2021

Linda Cahill
902 NE 72nd St
Seattle, WA 98115-5639
elsie4444@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Cahill:

Thank you for comments dated October 11, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. You have stolen native waters long enough!*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: kaionagirl808@everyactioncustom.com on behalf of [lisa chang](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, October 20, 2019 1:10:43 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands. The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.

Can you pls give me a list of all outreach you have tried to do with community meetings and hearing out the voices of those who are living an honest life as farmers?

Sincerely,
Lisa Lehuanani Chang

What is your experience with streams and where did you grow up?

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
lisa chang
165 Kaai St Honolulu, HI 96821-1545
kaionagirl808@gmail.com



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Lisa Chang
165 Kaai St
Honolulu, HI 96821-1545
kaionagirl808@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Chang:

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The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

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Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 2: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as show on pages 4-56 to 4-67 of the EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact

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on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 3: *The DEIS does not sufficiently analyze the threat and damage the diversions have caused to native aquatic species.*

Response 3: We respectfully disagree with your comment that the Draft EIS did not sufficiently analyze the threat and damage the diversions have caused to native aquatic species. Please note that while it is not scientifically possible to fully document impacts that first took place more than a century ago, as such data does not exist, the Draft EIS in Section 1.3 (Background - Historical Perspective) included a detailed discussion on the history of the EMI Aqueduct System and stream diversions in East Maui.

Moreover, with respect to impacts to native aquatic species, Section 4.2.1 of the Draft EIS, and the HSHEP model present four flow restoration scenarios within the License Area, and discusses the impacts of those flow scenarios on native aquatic species. The four flow scenarios presented are described as follows. (1) the Natural Condition scenario, which is the maximum boundary comparison scenario in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available habitat units predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available habitat units for native stream species. (2) the Full Diversion scenario, which is the minimum boundary comparison scenario where all diversions in this scenario were modeled as fully open or diverting 100% of available low flows. The low flows, roughly analogous to the stream's baseflow, are critical to protecting instream habitat for stream species. The diversions and aqueduct system were built to capture 100% of normal low flow plus some smaller amount of storm runoff. Hawaiian streams are "flashy" where discharge rises quickly in response to rainfall and then quickly falls back to low flow conditions.

When low flow conditions persist and overall diversion amounts do not exceed the conveyance capacity of the aqueduct, the streams can be dewatered below the diversions resulting in negative

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impacts on species habitat and passage. This scenario was intended to represent the diversion conditions found during sugar cane production. Although the Full Diversion condition has not existed for more than ten years, it is identified as a baseline condition in that it was the prevailing condition for nearly 100 years when sugarcane was in full production and provided context to a very well known historical condition. It is important to note that none of the proposed actions in the DEIS seek to increase diversion amounts over the amount of water diverted at the peak of sugarcane production. (3) the 2018 IIFS scenario, where the flow conditions are as required under the IIFS set forth under the CWRM D&O. (4) the No Action alternative or "30% Remaining Flow Diversion" scenario, which represents the longstanding agreement that "government owned waters" from the License Area amounted to 70% of streamflow, and the remaining 30% of the streamflow emanated from private/A&B/EMI lands. Thus, the No-Action alternative is the diversion of 30% of water available at the Honopou Stream boundary after compliance with the CWRM D&O IIFS. This No-Action description is not directly translatable into the HSHEP model as the model requires specific diversion conditions at each diversion not an aggregate amount from a group of diversions. Therefore, this scenario assumed that 30% of remaining low flow discharge was diverted at each individual diversion after complying with the IIFS. The analysis of these different flow scenarios, including a comparison of the proposed Water Lease to the No Action/No Water Lease scenario, is provided within the EIS.

Comment 4: *The DEIS doesn't include any plan or funding to manage the invasive species in the lower state lands they lease. These invasive plants and animals are hurting the health and the function of the watershed lands.*

Response 4: Please note that as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a Watershed Management Plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species, and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS, see pages 2-2 to 2-4.

Comment 5: *The DEIS should give in depth review of and support for shorter term lease options of less than 30 years because of uncertainties of future rainfall and future water supplies.*

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Response 5: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please see pages 3-49 to 3-80 of the EIS for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Comment 6: *Can you pls give me a list of all outreach you have tried to do with community meetings and hearing out the voices of those who are living an honest life as farmers?*

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Response 6: The EIS process has included substantial engagement. Chapter 9 of the EIS contains all consultation efforts during this EIS process. Specifically, all the County of Maui agencies were consulted with during the EIS Preparation Notice (EISPN) and the Draft EIS stages. It is further noted that there were also several opportunities for members of the public to participate in public scoping meetings conducted as part of the EIS effort. Moreover, numerous of the agencies provided comments to both documents as shown in Appendix M of the EIS, which includes all comments and responses related to the EISPN, and Appendix N of the Final EIS which includes all comments and responses related to the Draft EIS.

Regarding meetings with the Maui County Council, representatives of A&B, after the close of its sugar operations and prior to the sale of its agricultural fields to Mahi Pono, appeared before the Council to discuss its diversified agricultural plans for its former sugar lands. Representatives of Mahi Pono have individually met with several members of the Maui County Council, but Mahi Pono has not been formally invited to provide testimony at a formal meeting of the County Council or any of its committees.

Mahi Pono has also had various meetings with community groups such as Go Maui, Maui Tomorrow, Mā‘alaea Community Association, Pukalani Community Association, and the Alliance of Maui Community Associations regarding the Mahi Pono farm plan and use of water from East Maui streams, and conducted farm tours with members of the community. Mahi Pono is also working directly with MDWS as well as the County Corporation Counsel and Mayor’s offices, to help coordinate continued deliveries of surface water to the County’s Kamole-Weir WTP and the KAP.

Comment 7: *What is your experience with streams and where did you grow up?*

Response 7: Your comment is unclear. However, please note that Trutta Environmental Solutions (Trutta) conducted the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) which documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals’ habitats. Please note that Trutta has extensive experience working with streams in the State of Hawai‘i.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: Marina@everyactioncustom.com on behalf of [Marina Drummer](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 6:09:41 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

This is such a disappointing decision. I no longer live on Maui, but here on Kaua'i, we have the same issues. It's hard to believe that with all the research and testimony provided that the council continues to approve the diversion of water that should be allowed to flow and if anything be diverted for Hawaiian homes and more loi's.

It seems that corporate greed is always rewarded in Hawaii and the islands suffer all the more for it.

I suppose it will only end when every drop is drained. I wish there was some explanation as to what the water that A&B is diverting will be used for...very sad about this decision.

Sincerely,

Marina Drummer

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Marina Drummer
4328 KILAUEA Kilauea, HI 96754
Marina@CommunityFuturesCollective.org



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Marina Drummer
4328 Kilauea
Kilauea, HI 96754
Marina@CommunityFuturesCollective.org

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through

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several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *This is such a disappointing decision. I no longer live on Maui, but here on Kaua'i, we have the same issues. It's hard to believe that with all the research and testimony provided that the council continues to approve the diversion of water that should be allowed to flow and if anything be diverted for Hawaiian homes and more loi's.*

Response 2: We acknowledge your comments. As it relates to your comment about Hawaiian homes, specific information regarding the Department of Hawaiian Home Lands' (DHHL) future water reservation, including the anticipated amount of the DHHL reservation, was discussed in Section 2.1.1 of the Draft EIS as follows:

The DHHL staff has identified 11,455,510 gpd (10,428,000 gpd for Kēōkea-Waiohuli + 1,027,510 gpd for Pulehunui) of water as their recommendation for a reservation of water rights sufficient to support current and future homestead needs related to this proposed Water Lease.

The DHHL has indicated that reserved water may be available for other purposes until the DHHL has an actual need for the water. For its Kēōkea-Waiohuli and Pulehunui lands, the DHHL will be dependent on the EMI Aqueduct System collecting and transporting East Maui stream waters, in order to get waters to its lands. Until actual need materializes, the DHHL would receive payments related to lease rents paid by the lessee for those waters should EMI use a portion/all of the DHHL's Water Reservation, and the DHHL could receive other possible compensation or consideration.

Hence, the assumption in the Draft EIS is that the DHHL reservation would be for approximately 11.5 mgd. This assumption is carried through in the Final EIS based upon the Hawaiian Homes Commission (HHC) actions of May 30, 2019, which approved a reservation request related to the EMI Aqueduct System for 11,445,510 gpd as shown on pages 2-4 to 2-7 of the EIS. As explained therein, the DHHL water reservation process involves several steps before a reservation amount is formally identified. The first step is to hold a DHHL consultation with the beneficiaries in accordance with DHHL's Beneficiary Consultation Policy. Then, following adoption of the Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water, CWRM could act on a reservation request related to a proposed lease.

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As explained in Section 2.1.1 of the Draft EIS, DHHL held a Beneficiary Consultation on January 14, 2019. Presentations were made by representatives of A&B/EMI, Mahi Pono, the Department of Land and Natural Resources' (DLNR) Land Division, and DHHL staff and consultants. The results of the Beneficiary Consultation were presented to the HHC on May 30, 2019, as agenda item G-2. The motion passed by the HHC to accept the Beneficiary Consultation Report on a water reservation related to the EMI Aqueduct System's request for water lease from DLNR, and to reauthorize the chairman to formally request a related water reservation from CWRM for Hawaiian Home Lands on Maui. The reservation request was approved by the HHC related to the EMI Aqueduct System for 11,455,510 gpd (this is comprised of 10,428,000 gpd non-potable water for Keokea-Waiohuli and 1,027,510 gpd non-potable water for Pulehunui). This amount is consistent with the amount of the DHHL reservation projected in the Draft EIS. However, as of this time, it is our understanding that the water reservation request has not been made by DHHL to CWRM.

While Mahi Pono's current farm plan assumes the full use of the water that can be diverted from East Maui streams after compliance with the CWRM D&O, Mahi Pono will be obligated to reduce elements of its farm plan, and thus the availability of crop, to accommodate the permanent reduction in available water resulting from DHHL's allocation. The Reduced Water Volume alternative described in Chapter 3 of the EIS provides an assessment of the impacts of less water being made available for the Proposed Action, including Maui Pono farm plan in the Central Maui agricultural fields. Specifically, consistent with the analysis provided in the Agricultural and Related Economic Impacts report (Appendix I), for each 1 mgd reduction of surface water available to Mahi Pono from the Water Lease, whether due to the DHHL reservation or otherwise, in Central Maui there would be an estimated reduction by about 173 acres of land in crops, a reduction by about 15 acres of land in irrigated pasture, an increase of about 188 acres of land in unirrigated pasture.

You are correct that Section 2.1.1 of the Draft EIS stated, with respect to the DHHL reservation, that "*Until that reservation is physically claimed, however, it will be available for use by the lessee.*" That statement has been clarified in the Final EIS as shown on pages 2-4 to 2-7 of the EIS, as it is uncertain whether the DHHL reservation amount would be available to the lessee until such time as it is needed by DHHL. Such temporary uses of the DHHL reservation water are not addressed under HRS § 171-58. We further acknowledge that in addition to any specifications made by the CWRM and BLNR regarding the Water Lease, a separate agreement between the Water Lease lessor and the DHHL would be necessary to allow any temporary use of water reserved for DHHL.

Please note that as discussed in Section 2.1.2 of the Draft EIS, under the Proposed Action, at full buildout of the Mahi Pono farm plan, it is estimated that approximately 87.95 mgd will be diverted from the License Area and an additional 4.37 mgd in between Honopou Stream and Māliko Gulch to support uses described in the EIS. However, as with any agricultural project of this scale, actual water usage varies over time, and will continue to increase as development of

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the Mahi Pono farm plan continues to full buildout. Hence, the amount of water diverted at any given time will be only what is needed to meet actual needs.

As it relates to kalo farms, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu'u, Ka'aiea, 'O'opuola, Puehu, Nāili'ilihale, Kailua, Hanahana, Hoalua, Waipi'o, Mokupapa and Ho'olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on page 1-23 of the EIS. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration statuts); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamo Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe'e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other

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purposes, for restoration for lo‘i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293 of the EIS.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

Comment 3: *It seems that corporate greed is always rewarded in Hawaii and the islands suffer all the more for it. I suppose it will only end when every drop is drained. I wish there was some explanation as to what the water that A&B is diverting will be used for...very sad about this decision.*

Response 3: We acknowledge your comments. However, please note that the EIS is not a decision-making document. It is an environmental disclosure document that assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI

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Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: markhordyszynski@everyactioncustom.com on behalf of [Mark Hordyszynski](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 19, 2019 4:21:04 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Please open your eyes to see that this is theft, and stealing is a crime.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Mark Hordyszynski
195 Inia Pl Kula, HI 96790-8802
markhordyszynski@mac.com



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Mark Hordyszynski
195 Inia Pl Kula, HI 96790-8802
markhordyszynski@mac.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Hordyszynski:

Thank you for comments dated October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Please open your eyes to see that this is theft, and stealing is a crime.

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: mauimarta@everyactioncustom.com on behalf of [Martha Martin](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Sunday, November 3, 2019 2:32:04 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for Maui Pono agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. This is not happening now (water flowing in all streams).

For the past several years, rainfall has decreased, sending less water to Maui Island. Predicting how much rain will fall in the future is impossible. However, it is likely that the weather will change, and hotter, drier seasons may come.

An environmental impact statement for a new water lease has not been submitted.

For these reasons, I urge you not to increase the amount of water allowed to be diverted by Maui Pono and not to approve a lease longer than one year.

Also I urge you to publicly disclose any new lease terms and to hold public hearings before any new leases are signed.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Martha Martin
40 Kunihi Ln Apt 226 Kahului, HI 96732-1389
mauimarta@gmail.com



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Martha Martin
40 Kunihi Ln Apt 226
Kahului, HI 96732-1389
mauimarta@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Martin:

Thank you for comments dated November 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and

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beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

With regards to your comment that this is happening now, please note that many people at the EISPN public scoping meetings on February 22nd and 23rd, 2017 testified noting positive impacts seen from increased stream flow resulting from the cessation of sugar operations. Please note that the CIA has been updated to include feedback received on the Draft EIS, as summarized in Section 4.6 of the Final EIS. See pages 4-239 to 4-252 of the EIS. This updated discussion details statements made regarding increases in stream life, marine life, and the health of the watershed since the cessation of sugarcane operations in 2016 due to less stream water being diverted. This is expected as it was discussed in Section 4.2.1 of the Draft EIS that the Proposed Action would increase the number of HU as compared to sugarcane operations. Please note that that as of October 2020, an average of 23.3 mgd was being diverted from East Maui streams through the EMI Aqueduct System. Hence it can be assumed that current water diversion rates from the License Area are comparable to the amount that would be diverted under the No Action alternative, which is estimated to be approximately 26.39 mgd. The HSHEP model estimated that approximately 79.8% of total HU would be available under the No Action alternative. However, please note that under the Proposed Action, the total HU would be less than projected under the No Action alternative as noted above in Response #17.

Comment 2: *For the past several years, rainfall has decreased, sending less water to Maui Island. Predicting how much rain will fall in the future is impossible. However, it is likely that the weather will change, and hotter, drier seasons may come.*

Response 2: We acknowledge your comments. Climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives

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considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on pages 4-89 to 4-91, which relates to climate change impacts to each of respective environmental resource category technically assessed.

Comment 3: *An environmental impact statement for a new water lease has not been submitted.*

Response 3: Please note that this is the EIS for the proposed Water Lease.

Comment 4: *For these reasons, I urge you not to increase the amount of water allowed to be diverted by Maui Pono and not to approve a lease longer than one year.*

Also I urge you to publicly disclose any new lease terms and to hold public hearings before any new leases are signed.

Response 4: Please note that that Chapter 3 of the Draft EIS provided an in-depth review of an Alternative Lease Duration alternative. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other

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environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. Please also see pages 3-49 to 3-80 of the EIS for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Please note that it is anticipated that the BLNR will hold a public hearing in conjunction with this Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: lovechildmuse@everyactioncustom.com on behalf of [Melissa Verbena](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 9:43:11 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

I appreciate this opportunity to submit comments on this Draft EIS. Please take my comment to heart and act in a way that supports humans & the environment in a fair & good way.

Mahalo, Melissa Verbena, Makawao

Sincerely,
Melissa Verbena
1135 Makawao Ave Makawao, HI 96768-7403
lovechildmuse@gmail.com

From: [Melissa Verbena](#)
To: [Public Comment](#)
Subject: East Maui Water Lease proposal
Date: Sunday, November 3, 2019 5:34:39 AM

[Sent from Yahoo Mail on Android](#)

On Sun, Nov 3, 2019 at 5:18 AM, Melissa Verbena <malkamelissa@yahoo.com> wrote:

East Maui Water

From: Melissa Verbena

To: Wilson Okamoto

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomanu, and Huelo License Areas

Please accept my comments on the subject DEIS:

I am very concerned about this proposed lease of public water because I want the streams restored, to flow for the people, and for the fish & vegetation to flourish again in East Maui. I want to see the watershed restored for the future health of all & for the natural beauty to be nurtured by the decisions made today.

I will like the EIS to address my following concerns here.

I don't feel a 30 year lease option makes sense in light of changes in world climate and unpredictable circumstances ahead. No lease is my preference, and in any case, only a short-term lease with necessity to re-examine how the leasing affects the areas the water is being diverted from makes much more sense to me. I will like to see decisions made that honor the local ecosystem & residents of East Maui.

One unintended concern re: water diversion is the stagnant pools along diverted streams that have been breeding grounds for mosquitos carrying Dengue fever virus to East Maui residents. The EIS needs to discuss the role that diverted streams have on mosquito populations in East Maui, and the impact unwanted resuming of diversions will have on people living in & visiting the area.

Also, I will be most grateful if the EIS will discuss methods of restoring the 13 streams in the Honopou to Kailua area, where lots of people live and farm and gather. All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time.

I want the EIS to discuss the impacts of continuing those diversions, which will decimate 85% of native stream habitat and impact thousands of local residents.

I am asking that the DEIS include my interests here in your decision making process.
Thank you for this opportunity to submit comments on this Draft EIS!

MahaLO & with ALOha,
Melissa Verbena

[Sent from Yahoo Mail on Android](#)



WILSON OKAMOTO
CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Melissa Verbena
1135 Makawao Ave
Makawao, HI 96768-7403
lovechildmuse@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Verbena:

Thank you for comments dated October 18, 2019 and November 3, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be dive_rted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *I am very concerned about this proposed lease of public water because I want the streams restored, to flow for the people, and for the fish & vegetation to flourish again in East Maui. I want to see the watershed restored for the future health of all & for the natural beauty to be nurtured by the decisions made today.*

Response 2: As previously stated in Response 1, the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species;

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and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the EIS.

Comment 3: *I don't feel a 30 year lease option makes sense in light of changes in world climate and unpredictable circumstances ahead. No lease is my preference, and in any case, only a short-term lease with necessity to re-examine how the leasing affects the areas the water is being diverted from makes much more sense to me. I will lime to see decisions made that honor the local ecosystem & residents of East Maui.*

Response 3: Please note that that Chapter 3 of the Draft EIS did include an in-depth review of an Alternative Lease Duration alternative. Please note that the State has the authority to issue a water lease for a 65-year term. Section 3.2.2.1 of the Draft EIS states:

As discussed in Chapter 1, on May 14, 2001, A&B requested that the BLNR offer a long-term (30 year) lease at public auction for the right, privilege and authority to enter and go upon the State-owned License Area for the purposes of developing, diverting, transporting and using government-owned waters. However, the BLNR has the authority to offer such a lease with a term that is either shorter or longer than 30 years, provided, however, that under HRS § 171-36, the BLNR cannot authorize a lease for a term longer than sixty-five years. Some have viewed a shorter term for the Water Lease as an opportunity to evaluate the lessee's performance during its term as a basis for further extension. In this context, a lease term shorter than 30 years could limit the ability of the lessee to obtain financing for the needed investment in the intended use—the establishment of successful, sustainable diversified agricultural operations of crops that may take years to reach economic viability. This would be inconsistent with the Proposed Action objective of developing diversified agriculture in Central Maui.

The lessee under the proposed Water Lease will have to assume the risk of lower rainfall and lower water supply in the future, over the term of the Water Lease, whatever that term may be. And diversions must be in compliance with the CWRM D&O, irrespective of rainfall or other environmental changes. However, the Alternative Lease Duration alternative is fully analyzed in Chapter 3. The Agricultural and Related Economic Impacts report provided as Appendix H to the Draft EIS explains that an estimated 10 years will be needed for Mahi Pono and its lessees to remove volunteer sugarcane and weeds from 30,000 acres of agricultural fields in Central Maui, amend soils, install field improvements, build warehouses and other structures, and plant crops. Moreover, the predominant crops will be various types of orchard trees (avocado, coffee, citrus, macadamia nuts, etc.), which reflect a long-term commitment to farming. About 5 to 12 years will be required for orchard trees to reach full maturity, after which the trees will provide yields for 35 to over 100 years. Under the Alternative Lease Duration alternative, assuming a lease shorter than the requested 30 years, this could limit the ability of Mahi Pono or a farm lessee to obtain financing for the needed investment to establish a successful diversified agricultural

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operation and crops that may take years to reach economic viability, and the full development and implementation of Mahi Pono's farm plan would be hampered and potentially derailed due to the risk of not being able to farm for a long enough period to recover its planned investment. See pages 3-49 to 3-80 of the EIS for a table summarizing the comparative evaluation of all reasonable alternatives, including the Alternative Lease Duration alternative.

Climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of this EIS as shown on pages 4-89 to 4-91 of the EIS, which relates to climate change impacts to each of respective environmental resource category technically assessed.

Comment 3: *One untended concern re: water diversion is the stagnant pools along diverted streams that have been breeding grounds for mosquitos carrying Dengue fever virus to East Maui residents. The EIS needs to discuss the role that diverted streams have on mosquito populations in East Maui, and the impact unwanted resuming of diversions will have on people living in & visiting the area.*

Response 3: With respect to your comment about the creation of mosquito breeding grounds, the instream amount of potential mosquito habitat was quantified using the HSHEP model. Within the model, a positive linear relationship between decreased streamflow and increased mosquito habitat was used to assess the impacts of stream diversion on mosquito habitat as discussed in

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Section 4.2.1 of the EIS. Thus, an increase in habitat was predicted to occur at diverted flows as noted in the section entitled “Modeling” of Appendix A of the EIS and summarized in Section 4.2.1 and Section 4.4.2 of the EIS. Please note that Section 4.2.1 of the Final EIS has been revised to include a discussion of the available mosquito habitat units in the License Area under different flow scenarios as shown of pages 4-58 to 4-61 of the EIS.

Although the HSheP model assessed potential changes of mosquito habitat in response to stream flow, several problems occur with controlling or eliminating mosquitos with increased streamflow. First, in addition to breeding in streams, the Culex mosquitos are crevice breeders and small pockets of water throughout the forest will still exist under any streamflow scenario. While improved baseflow in reaches downstream of diversions would decrease standing water habitat for the introduced mosquito species, it is highly likely that some standing water pockets will always be present at the edges of the stream channel. Thus, streamflow restoration alone is unlikely to eliminate the Culex mosquitos from East Maui streams. Second, Hawaiian streams are naturally flashy (i.e they rise and fall quickly after rainfall) and this results in numerous shallow, slow-moving pockets of water along the stream margins at many discharge amounts. In earlier studies conducted by Trutta Environmental Solutions (Trutta), regarding controlling introduced poecilid fishes (e.g. guppies and mosquitofish) which transmit parasites to native streamfish, it was hypothesized that increased streamflow would wash these species out of the streams. However, this did not occur with increased streamflow. The introduced poecilid fishes remained after large floods and found numerous places to live along the stream margins and behind stream obstructions. Within the East Maui streams surveyed, the introduced poecilid fishes were observed upstream of diversions in streams where natural flow patterns have continuously existed. While the reactions of poecilid fishes are not a perfect analog for Culex mosquito response to increased streamflow, the benefits of increased streamflow alone may be limited once the Culex mosquito (*Culex quinquefasciatus*) is established. We also note that anecdotal observations made by Trutta staff members support the continued presence of Culex mosquitoes under a wide range of stream flows. They reported being swarmed by mosquitos in both diverted and undiverted streams in Hawai'i.

Comment 5: *Also, I will be most grateful if the EIS will discuss methods of restoring the 13 streams in the Honopou to Kailua area, where lots of people live and farm and gather. All that is said is that it's estimated that all of the water will be diverted from the streams 60% of the time. I want the EIS to discuss the impacts of continuing those diversions, which will decimate 85% of native stream habitat and impact thousands of local residents.*

Response 5: The Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a

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tributary to Pa‘akea Stream which is classified under the CWRM D&O as a “connectivity stream.”

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action’s impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as shown on pages 4-56 to 4-67 of the EIS.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: midicox@everyactioncustom.com on behalf of [Midi Cox](#)
To: [Public Comment](#)
Subject: Comments on Alexander & Baldwin's Draft Environmental Impact Statement
Date: Wednesday, October 2, 2019 7:00:54 PM

Dear Mr. Matsukawa,

Aloha.

Please accept my comments in opposition to Alexander & Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Water is very precious. While my grandfather and father worked to be sure that Alexander & Baldwin had as much water as was desired, I am of the belief that the times have changed. Big entities like A&B should not be allowed to use their big presence to get favorable conditions for their proposed activities.

Also, it is time for the governing bodies to be proactive in encouraging alternative uses other than what has been for 100 years.

Mahalo for this opportunity to submit comments on this Draft EIS.

Sincerely,
Midi Cox
Honolulu, HI 96822
midicox@gmail.com



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September 3, 2021

Midi Cox
Honolulu, HI 96822
midicox@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Midi Cox:

Thank you for comments dated October 2, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander & Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. Water is very precious. While my grandfather and father worked to be sure that Alexander & Baldwin had as much water as was desired, I am of the belief that the times have changed. Big entities like A&B should not be allowed to use their big presence to get favorable conditions for their proposed activities.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be dive_rted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *Also, it is time for the governing bodies to be proactive in encouraging alternative uses other than what has been for 100 years.*

Response 2: Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3. Moreover, based on comments received on the Draft EIS, the alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please

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submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: mikala.minn@everyactioncustom.com on behalf of [Mikala Minn](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 12, 2019 12:59:53 PM

Dear Mr. Matsukawa,

I am a native Hawaiian community farmer in Honomma'ele, Hana, Maui. I manage a 10 acre farm that provides free fruits and vegetables to over 250 permanent residents per year. We utilize catchment water to run operations because we can't take water from the stream, and don't have access to municipal wai. Reckless are these short-sighted land and water grabs by corporations and government...our County and State are acting like corps. Back door deals must be exposed and prosecuted.

Aloha and Mahalo

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Mikala Minn
31 Ulaino Rd Hana, HI 96713
mikala.minn@gmail.com



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Mikala Minn
31 Ulaino Rd
Hana, HI 96713
mikala.minn@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mikala Minn:

Thank you for comments dated October 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *I am a native Hawaiian community farmer in Honommā‘ele, Hāna, Maui. I manage a 10 acre farm that provides free fruits and vegetables to over 250 permanent residents per year. We utilize catchment water to run operations because we can’t take water from the stream, and don’t have access to municipal wai. Reckless are these short-sighted land and water grabs by corporations and government...our County and State are acting like corps. Back door deals must be exposed and prosecuted.
Aloha and Mahalo*

Response 1: We acknowledge your comments and understand that you are a community farmer in the Hāna region. However, please note that none of the streams to be diverted under the Proposed Action or historically diverted by the EMI Aqueduct System are within the Hāna region.

Comment 2: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

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Response 2: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

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We appreciate your interest and participation in this environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Keola Cheng".

Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

From: mollymamaril@everyactioncustom.com on behalf of [Molly Mamaril](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 7:01:57 PM

Dear Mr. Matsukawa,

Dear Mr. Matsukawa,

I hope you are well. Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS overlooks the opportunity to benefit East Maui communities and ecosystems if the water was not diverted. The "baseline condition" doesn't need to remain the default and all options should be explored, especially considering that residents have sought to prevent these diversions for decades for multiple reasons (traditional and cultural practices, equity in usage, environmental reasons, etc). Their needs and suggestions should be heavily considered and respected as stakeholders and kama'aina who know this region intimately.

Mahalo for this opportunity to submit comments on this Draft EIS.

Sincerely,

Molly Mamaril

Sincerely,

Molly Mamaril

1550 Wilder Ave Honolulu, HI 96822-4678

mollymamaril@gmail.com



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Molly Mamaril
1550 Wilder Ave
Honolulu, HI 96822-4678
mollymamaril@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Mamaril:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS overlooks the opportunity to benefit East Maui communities and ecosystems if the water was not diverted. The "baseline condition" doesn't need to remain the default and all options should be explored, especially considering that residents have sought to prevent these diversions for decades for multiple reasons (traditional and cultural practices, equity in usage, environmental reasons, etc). Their needs and suggestions should be heavily considered and respected as stakeholders and kama'āina who know this region intimately.*

Response 2: Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3. Moreover, based on comments received on the Draft EIS, the alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 of the EIS.

Moreover, Chapter 3 of the Draft EIS includes a comparative evaluation of the environmental "benefits, costs, and risks" of the Proposed Water Lease and "each reasonable alternative" i.e. (a) through (d) across a spectrum of environmental factors, such as Soils, Surface Waters and Aquatic Environment, Groundwater, Coastal Waters, Drainage, Natural Hazards, Flora, Fauna, and Invertebrates, Historic Resources, Cultural Resources and Practices Social Characteristics, Economic and Fiscal Resources, Agricultural and Related Economic Resources Recreational Resources, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Water Systems, and Public Services and Facilities. However, please note that Section 3.4 of the Final

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EIS includes a comparative table of the various alternatives and the associated impacts of each alternative as shown on pages 3-49 to 3-80 .

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: maicraftsinfo@everyactioncustom.com on behalf of [Momi Fortune](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Thursday, November 7, 2019 8:39:22 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The water belongs in the streams. Mauka to makai. As a Lifelong island resident, I have personally witnessed the impact these diversions have on the streams. Dry stream beds can not support aquatic life. Kalo farmers are greatly impacted and that effects our food security on an isolated island where the majority of food is imported. Taking the water from where it belongs and redirecting it to dry lands is not sustainable or nature's way. It's insulting to the land to be treated with such disrespect at the benefit of a corporation. Put the water BACK in the streams. Any one can stand at a diversion along the hana Highway and clearly see the impact on nature below the diversion point.

Sincerely
MomiFortune

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Momi Fortune
Haiku, HI 96708
maicraftsinfo@gmail.com



WILSON OKAMOTO
 CORPORATION
 INNOVATORS • PLANNERS • ENGINEERS

10238-04
 September 3, 2021

Momi Fortune
 Haiku, HI 96708
 maucraftsinfo@gmail.com

Subject: Draft Environmental Impact Statement
 Proposed Lease (Water Lease) for the Nāhiku,
 Ke‘anae, Honomanū and Huelo License Areas

Dear Momi Fortune:

Thank you for comments dated November 7, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Letter to Momi Fortune
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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be dive_rted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The water belongs in the streams. Mauka to makai. As a Lifelong island resident, I have personally witnessed the impact these diversions have on the streams. Dry stream beds can not support aquatic life. Kalo farmers are greatly impacted and that effects our food security on an isolated island where the majority of food is imported. Taking the water from where it belongs and redirecting it to dry lands is not sustainable or nature's way. It's insulting to the land to be treated with such disrespect at the benefit of a corporation. Put the water BACK in the streams. Any one can stand at a diversion along the hana Highway and clearly see the impact on nature below the diversion point.*

Response 2: We acknowledge your comments. Please note that several of the environmental factors assessed in Draft EIS Chapter 4 (Existing Environment, Impacts, and Mitigation Measures) are not expected to experience new impacts, or significant new impacts, as a result of the proposed Water Lease, which will result in less water diversion from streams than historically occurred. However, we acknowledge that an EIS must consider cumulative impacts, which means "*the impact on the environment which results from the incremental impact of the [Water Lease] when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.*" HAR § 11-200-2. At the same time, an EIS is forward looking, meaning its aim is to study and present the potential impacts of a proposed action to help inform agency decision making. From that perspective, the impacts of over a century of stream diversions may inform decision-makers about the potential impacts of continued stream diversions as proposed under the Water Lease.

Although it is not scientifically possible to fully document impacts that first took place more than a century ago, the Draft EIS in Section 1.3 included a detailed discussion of the history of the EMI Aqueduct System and stream diversions in East Maui, and the Archaeological Literature Review and Field Inspection (Appendix E), which has been further supplemented to include information on the alleged legendary pōhaku in Wahinepe'e, archeological resources in Central Maui, climate change impacts on historical and archeological resources, and historical agriculture in East Maui, which provides information about the effects of East Maui stream diversions on streams, stream life, aquifers, watershed health, local subsistence agriculture, traditional farming and gathering and economic viability of rural families. As it relates to the natural environment, the Terrestrial Flora and Fauna Technical Report (Appendix C) describes

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the present composition of the flora and fauna resources in the License Area that are a result of human activity, including operation of the EMI Aqueduct System. Appendix C has been updated to include targeted discussions based on comments received in response to the Draft EIS as it relates to the impacts of the Proposed Action and the associated alternatives presented in Chapter 3 of the EIS. Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model (Appendix A) documents the stream habitat potential within the License Area from existing conditions that have been shaped by human activities, including the operation of the EMI Aqueduct System which has been updated to include targeted discussions on stream diversion impacts under different flow scenarios to native stream animals' habitats. As it relates to the human environment, the Cultural Impact Assessment (CIA) (Appendix F) documents cultural resources and practices within and in the vicinity of the License Area. The CIA has been supplemented with information related to additional outreach conducted in response to comments received on the Draft EIS. The Social Impact Assessment (SIA) (Appendix G) history in a context for understanding the current perceptions of people from the community, including their perceptions of the recent involvement of Mahi Pono. The SIA has been updated to include a discussion relating the cumulative social impacts. Hence, the cumulative impacts of the Proposed Action are the continuation of the impacts resulting from the EMI Aqueduct System diverting water from the License Area streams in East Maui that has occurred over the past century that have shaped the existing environmental conditions described in Chapter 4, albeit the Proposed Action involves water diversions of a lesser extent than in the past. Please note that Section 4.17 of the Final EIS (Section 4.16 of the Draft EIS) has been updated to reflect the updates in the technical studies that support this EIS as shown on pages 4-331 to 4-336 of the EIS.

Specifically with regards to stream diversion impacts on aquatic life, please note that the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) model used to conduct the report contained in Appendix A of the EIS and summarized in Section 4.2.1 of the Draft EIS addresses native stream habitat impacts. Specifically, as discussed in Section 4.2.1 of the Draft EIS:

Under the Proposed Action, it is assumed that the Water Lease would grant the right to collect government-owned waters from the License Area up to the maximum allowed under the CWRM D&O. Thus, under the Proposed Action, the number of HU within the entire License Area is decreased by approximately 40% from Natural Flow (no diversion) condition, but is increased by more than 10% over the Full Diversion condition. In other words, 60% of the total HU remains within the License Area. This ranges from 96.7% of the HU in the Full-flow Restoration streams to 15% remaining HU in the No-Flow Restoration streams (including the streams for which no IIFS was set in the 2018 CWRM D&O).

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The HSHEP model results conclude that the Proposed Action would have a negative impact by reducing native stream animal habitat from Natural Flow (undiverted) conditions

The above excerpt presents that from current conditions (i.e., October 2020, approximately 23.3 million gallons per day (mgd) diverted) to the Proposed Action (approximately 87.95 mgd), the number of habitat units (HU), as defined by the HSHEP report (Appendix A) as relative measures of stream habitat where each unit length of stream is multiplied by its suitability (range of 0 to 1) for a species resulting in a comparable measure of linear amount of suitable stream habitat which have measures of stream size and watershed wetness incorporated into the value that reflect comparative stream width and as a result only linear measures of habitat area are presented, would decrease to approximately 63.9% of the total potential HU available within the License Area. The Final EIS has included this clarifying statement in Section 4.2.1. See pages 4-56 to 4-67 of the EIS.

With regards to kalo farmers, please note that the CWRM D&O fully restored the streams identified as valued for taro farming in the License Area, thus addressing the water needs for kalo farming for the vast majority of streams that will be diverted under the Proposed Action as discussed in Section 1.3.4 of the Draft EIS. Specifically, Section 1.3.4. of the Draft EIS states:

Conveyance of Water to Kalo Growing Areas for Community Use

The CWRM ordered that all diversions on the following streams cease to allow for all water to flow to the taro growing areas or for community and non-municipal domestic uses: Honopou, Huelo/Puolua, Hanehoi, Pi'ina'au, Palauhulu, Waiokamilo, Wailuānui, 'Ōhi 'a/Waianu, Kualani/Hāmau, and Makapipi. (CWRM D&O, Conclusions of Law (COL) 138). All diversions for these streams are required to be modified so that no out-of-watershed transfers will occur from these streams, which will have uninterrupted free flowing water to the communities that depend upon them. It was not the CWRM's intent to regulate where and how much water will be used for traditional kalo agriculture or how the water will be apportioned amongst the kalo lo'i. The CWRM's approach does not automatically set precedents for other areas, but provides a model of water use that integrates traditional culture with modern natural resource management (CWRM D&O, COL 138-145).

It is also noted that the CWRM D&O recognized the registered diversions within the various watersheds, including any diversions that were declared or registered for taro cultivation. It is unknown whether there are other taro farms located along the 12 streams that are not addressed by the CWRM D&O (the "non-petitioned streams") and no such diversions were identified through consultation in the EIS, including additional consultation done for the Cultural Impact Assessment (CIA), Appendix F to the EIS. Moreover, no registered diversions along non-petitioned streams for tarowere identified through consultation on the EIS.

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We acknowledge that the CWRM did not amend the existing IIFS for 12 streams within the Huelo portion of the License Area (Kōlea, Punalu‘u, Ka‘aiea, ‘O‘opuola, Puehu, Nāili‘ilihaele, Kailua, Hanahana, Hoalua, Waipi‘o, Mokupapa and Ho‘olawa). These streams are indicated by blue in Figure 1-3 of the Draft EIS. However, please note that Figure 1-3 has been revised in the Final EIS as Figure 1-4 to accurately reflect the changes made in Section 1.3.4 regarding the stream references as shown on page 1-23 of the EIS. The CWRM did, however, address and order in the Huelo portion of the License Area: (1) Full restoration of Honopou, Hanehoi, and Huelo (Puolua) (tributary to Hanehoi; received its own restoration status); (2) Habitat restoration flows for Waikamoi Stream; (3) Connectivity flows for Puohokamoa Stream, and (4) after analysis, CWRM elected not to modify the IIFS for Wahinepe‘e Stream. The CWRM thus provided flow restoration spanning the Huelo portion of the License Area, including among other purposes, for restoration for lo‘i farming along those streams. However, even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches.

For the analysis, taro farms in East Maui (from Honopou to Nāhiku), both that use water from petitioned streams and non-petitioned streams, are assumed to cover about 55 net acres by 2030 (a little over 60 gross acres, and assuming the high estimate of 90% of the land is in crop). It is assumed that all or nearly all of the farming would take place in Honopou, Ke‘anae and Wailuā, and would rely primarily on the taro streams CWRM ordered for full restoration. Further, all or nearly all of the additional taro cultivation will occur in existing / historical taro cultivation areas, not in new areas, given the barriers presented by terrain and the economic challenges of initiating new taro cultivation. Even if restoration was made on additional streams, it is likely that the amount of additional acreage put into taro would be minimal, given that the areas lack the necessary river-valley characteristics of major taro growing areas, with many streams flowing through gulches. Under all scenarios addressed in the EIS, ample stream water should be available to irrigate the taro farms relying on these East Maui streams inasmuch-as the CWRM D&O “*will return free flowing water, with no upstream diversions, to all streams which have historically supported significant kalo cultivation ...*” (CWRM D&O at iv). Taro-farm operations and related economic activity would be about the same for all alternatives (i.e., the same production, sales, employment, payroll, taxes, etc.). Hence, the Proposed Action is not anticipated to have any significant impact on agronomic conditions in East Maui, nor on future East Maui taro farming. The above discussion has been added to Section 4.7.4 of the Final EIS as shown on pages 4-288 to 4-293 of the EIS.

Please note that the assumed acreage for taro farms excludes existing and potential farms for which the landowners do not have access or rights to water from the License Area streams, and farms irrigated with water from streams outside the License Area. In effect, East Maui taro farms west of Honopou and east of Nāhiku are excluded because they do not rely on the License Area streams.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: momiv808@everyactioncustom.com on behalf of [Momi Ventura](#)
To: [Public Comment](#)
Subject: Alexander and Baldwin's Lease Is DONE!!!
Date: Saturday, October 19, 2019 10:42:08 AM

Dear Mr. Matsukawa,

Please accept my comments in Against A Huge Cane Burning Land Stealing (They Were Given Lease, And They Sold These Land's To Create Subdivisions Galore) They're Crooks And This Alexander & Baldwin's proposal to further Take!!! And divert the Natural streams From East Maui. Goodness Enough Is Enough!!!! East Maui streams should not be diverted for Agriculture Anymore, They Have Plans To Build More Homes On Land's They No Longer Own.. We Hawaiian's Need Our Ancestral Land's!!! We Need To Invest In Ourselves!!! Unless and until the streams of East Maui have An Extremely Full & Healthy Flow of Water From Mauka To Makai. They Made Their Millions By Irreparably Destroying The Natural Landscape Of The Once Beautiful Hawai'i's Mountains And Hills..

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Momi Ventura
Kihei, HI 96753
momiv808@gmail.com



WILSON OKAMOTO
CORPORATION
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September 3, 2021

Momi Ventura
Kihei, HI 96753
momiv808@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Momi Ventura:

Thank you for comments dated October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in Against A Huge Cane Burning Land Stealing (They Were Given Lease, And They Sold These Land's To Create Subdivisions Galore) They're Crooks And This Alexander & Baldwin's proposal to further Take!!! And divert the Natural streams From East Maui. Goodness Enough Is Enough!!!! East Maui streams should not be diverted for Agriculture Anymore, They Have Plans To Build More Homes On Land's They No Longer Own.. We Hawaiian's Need Our Ancestral Land's!!! We Need To Invest In Ourselves!!! Unless and until the streams of East Maui have An Extremely Full & Healthy Flow of Water From Mauka To Makai. They Made Their Millions By Irreparably Destroying The Natural Landscape Of The Once Beautiful Hawai'i's Mountains And Hills..*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that

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were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: molanistar@everyactioncustom.com on behalf of [R Momi Vee](#)
To: [Public Comment](#)
Subject: There Is NO More Sugarcane.!!! Their Water Lease, Expired.
Date: Saturday, October 19, 2019 10:29:33 AM

Dear Mr. Matsukawa,

Accept my comments in Total Opposition to alexander and baldwin's ridiculous, unreasonable "proposal" to Further, Steal And divert Water from Our future.. That Belong Back in the streams of East Maui.!!!! Enough Is Enough!!! East Maui streams should not be diverted for "Agriculture" in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai...Please Take These Words To Heart.. Please..!!

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
R Momi Vee
Honolulu, HI 96768
molanistar@gmail.com



WILSON OKAMOTO
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10238-04
September 3, 2021

R Momi Vee
Honolulu, HI 96768
molanistar@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear R Momi Vee:

Thank you for comments dated October 19, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Accept my comments in Total Opposition to alexander and baldwin’s ridiculous, unreasonable "proposal" to Further, Steal And divert Water from Our future.. That Belong Back in the streams of East Maui!!!! Enough Is Enough!!! East Maui streams should not be diverted for "Agriculture" in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai...Please Take These Words To Heart.. Please...!!*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: makikirandy@everyactioncustom.com on behalf of [Randy Ching](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Tuesday, October 15, 2019 9:02:39 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the "baseline condition". This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.

A & B has diverted East Maui streams for over a century. They did this even after the 1978 ConCon established CWRM and enshrined the public trust doctrine in our state constitution. Water is a public trust resource and is protected under the State Water Code. A & B continued to treat the water in the streams as their own property. It is long past time to correct this situation.

A & B is no longer involved in agriculture and is now a REIT, dealing primarily in real estate. Let's return Maui's water to Maui's citizens and have the county's board of water supply control the distribution of water. The board of water supply should not be paying A & B for the water -- by law, it is the county's water to be used for the county's residents.

Maui County should just purchase the entire EMI system and be done with this mess. If the county does not have enough money, they should get a loan from the State and pay it back over the next few decades. The control of East Maui's waters is at stake.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Randy Ching
Honolulu, HI 96819
makikirandy@yahoo.com



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September 3, 2021

Randy Ching
Honolulu, HI 96819
makikirandy@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Mr. Ching:

Thank you for comments dated October 15, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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Comment 2: *The DEIS just assumes that most of the East Maui streams should stay diverted like they have been for 100 years as the “baseline condition”. This avoids discussing the option of no diverted streams and how that would benefit the East Maui ecosystems and East Maui communities.*

Response 2: We respectfully disagree with your comment that the Draft EIS does not discuss options of no diverted streams and the potential impacts that would occur from that option. Please note that Section 3.4.3 of the Draft EIS states:

The Proposed Action constitutes the issuance of one long-term (30-year) Water Lease from the BLNR that grants the lessee the "right, privilege, and authority to enter and go upon" the License Area for the "purpose of developing, diverting, transporting, and using government owned waters" through the existing EMI Aqueduct System which supplies water to domestic and agricultural water users. The Water Lease, which will be awarded by public auction, will enable the lessee to enter upon lands owned by the State of Hawai‘i in order to maintain and repair existing access roads and trails used as part of the EMI Aqueduct System, and will allow for the continued operation of the EMI Aqueduct System to deliver water to the MDWS for domestic and agricultural water needs in Upcountry Maui, including the agricultural users at the KAP and the planned 262-acre KAP expansion, as well as for the Nāhiku community, which, through the MDWS, draws up 20,000 to 45,000 gallons per day (gpd), dependent on weather, directly from the EMI Aqueduct System.

The Draft EIS analyzed the Proposed Action (the proposed Water Lease) and alternatives to the Proposed Action, including the “No Action” alternative whereby no Water Lease would be issued and the EMI Aqueduct System would only divert approximately 30% of the water from the overall Collection Area, and approximately 4.37 mgd from the private lands between Honopou Stream and Māliko gulch. Under that scenario, which is analyzed in Chapter 3 of the Draft EIS and the technical studies, it is estimated that the maximum amount of surface water

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available to the EMI Aqueduct System would be approximately 30.76 mgd. The effects on East Maui ecosystems were analyzed. Under the no Water Lease scenario, 30% of remaining low flow discharge is diverted at each individual diversion after complying with the CWRM D&O. Under that scenario, approximately 79.8% of the potential habitat units, or "HU", would remain. Put another way, the No Water Lease/No Action alternative reduces the potential habitat units by approximately 20.2% from the Natural Flow scenario. Regarding impacts to East Maui communities, it is noted that a portion of the Nāhiku community is served by the MDWS via EMI's West Makapipi Tunnel 2 (Well No. 4806-07) (also known as "Nahiku Tunnel"), a development tunnel located on EMI land directly adjacent to the Ko'olau Ditch. Under the Proposed Action, water delivery to the Nāhiku community is expected to continue, whereas if no Water Lease is issued, water service to the MDWS for Nāhiku is presumed to terminate

The Draft EIS also provided an analysis of the impacts of a "Reduced Water Volume" alternative, meaning a scenario where a Water Lease is issued to authorize diversions in an amount less than what would be permitted after compliance with the CWRM D&O. Moreover, Section 3.4 of the Draft EIS provides a comparative analysis of all the reasonable alternatives, which has been updated in the Final EIS to include a comparative table as shown on pages 3-49 to 3-80 of the EIS. Chapter 3, Section 3.2.1 of the Draft EIS included a "sliding scale" analysis of the impacts of a water lease being issued authorizing diversions amounts at less than what is allowed under the CWRM D&O (the sliding scale quantified effects based upon each 1 mgd reduction in water).

Comment 3: *A & B has diverted East Maui streams for over a century. They did this even after the 1978 ConCon established CWRM and enshrined the public trust doctrine in our state constitution. Water is a public trust resource and is protected under the State Water Code. A & B continued to treat the water in the streams as their own property. It is long past time to correct this situation.*

Response 3: Please note that A&B has been diverting water from East Maui for over a century as discussed in Section 1.3.3 of the Draft EIS. Specifically Section 1.3.3 of the Draft EIS states:

Since 1876, A&B, or its predecessors and affiliates, have been issued from the Kingdom, the Territory and then the State of Hawai'i, various leases, agreements, licenses, and permits that authorized the development, diversion, transportation and use of government-owned water from streams in East Maui. The water leases were for the 33,000 acres owned by the Territory/State (License Area).

The original lease traces back to a September 13, 1876 license from the Kingdom of Hawai'i. Subsequent leases have been governed by an agreement dated March 18, 1938 between the Territory of Hawai'i and A&B. Over the course of the 20th Century, A&B retained the rights to the use of water from the License Area by being the successful bidder for water leases. The last long-term licenses were issued in

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the 1950s and 1960s, ultimately expiring in 1986. Since 1986, however, the BLNR has authorized holdover and/or annual revocable permits for the use of water, with the latest being approved on November 9, 2018.

However, please note that the above excerpt has been revised for clarity.

With regards to the public trust doctrine, the dual roles of the BLNR and its sister agency, the CWRM, as Public Trustees with regard to the amount of surface water that the Public Trust Doctrine requires to be left undiverted from the streams within the License Area, is one of the subjects of the still pending contested case hearing on A&B's 2001 application to the BLNR for the auction of the subject long-term Water Lease (Proposed Action). As such, it is anticipated that the BLNR, in its decision-making regarding the requested issuance of the long-term Water Lease, will follow the judicial guidance that has already been given regarding what is necessary for the BLNR to comply with the requirements of the Public Trust Doctrine. Please note that a new Section 1.5 has been added to the Final EIS to discuss the Public Trust Doctrine as it relates to the Proposed Action in length as shown on pages 1-25 to 1-27 of the EIS.

Comment 4: *A & B is no longer involved in agriculture and is now a REIT, dealing primarily in real estate. Let's return Maui's water to Maui's citizens and have the county's board of water supply control the distribution of water. The board of water supply should not be paying A & B for the water -- by law, it is the county's water to be used for the county's residents.*

Response 4: You are correct that A&B is now a REIT, that deal primarily with real estate investments. With regards to your comment about the Maui BWS controlling the EMI Aqueduct System, the County Board of Water Supply (BWS) Temporary Investigative Group (TIG) Report, which was published after the Draft EIS, on the potential acquisition of the EMI Aqueduct System by the County, speaks directly to the "ownership change" alternative referenced in your comment. To provide further context, on July 19, 2019, the Maui County BWS formed the TIG to explore options for ensuring public access to water, including the feasibility of purchasing and maintaining the EMI Aqueduct System.

Based upon information available in relation to findings and conclusions of the TIG report, it is our assessment that the County's potential acquisition of the EMI Aqueduct System remains speculative. Furthermore, much of the institutional knowledge needed to properly operate the EMI Aqueduct System would be lost under any change in ownership scenario. This could reduce the efficacy of the system, the new owner may not have the expertise needed to properly maintain it, and possibly lead to additional and unforeseen environmental impacts. Moreover, a change in ownership would presumably directly contradict the objectives of the Proposed Action as outlined within the EIS. It is noted that the TIG report's proposal for water rates for the Central Maui agricultural fields is nearly ten times that of what is being charged to the

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Agricultural Park and Upcountry agricultural users, thus rendering the economic viability of agriculture on the Central Maui fields unfeasible.

For purposes of assessment in this EIS, it is assumed that an alternative owner of the EMI Aqueduct System would be required to meet goals of the Proposed Action as described in this EIS, including meeting the Proposed Action's stated objective to support an economically feasible, sustainable diversified agricultural operation across the Central Maui agricultural fields.

For the reasons discussed above, the County's acquisition of the EMI Aqueduct System, and the County's pursuit of a water lease from the BLNR are viewed as speculative and an unreasonable alternatives. However, the existence and findings of the TIG Report has been acknowledged in Section 3.1.2 of the Final EIS, as shown on pages 3-19 to 3-20 of the EIS. A copy of the TIG Report has been included in the Final EIS as Appendix P.

Please note that 'by law' majority of the water actually belongs to the State as it originates on State owned land. However, approximately 30% of the water that flows through the License Area originates from privately owned lands as in Section 3.3 of the Draft EIS and as outlined by Appendix R-5 which has added to the Final EIS as shown on pages 3-24 to 3-25 of the EIS.

Comment 5: *Maui County should just purchase the entire EMI system and be done with this mess. If the county does not have enough money, they should get a loan from the State and pay it back over the next few decades. The control of East Maui's waters is at stake.*

Response 5: As noted in Response #4 above, based upon information available in relation to findings and conclusions of the TIG report, it is our assessment that the County's potential acquisition of the EMI Aqueduct System remains speculative. Furthermore, much of the institutional knowledge needed to properly operate the EMI Aqueduct System would be lost under any change in ownership scenario. This could reduce the efficacy of the system, the new owner may not have the expertise needed to properly maintain it, and possibly lead to additional and unforeseen environmental impacts. Moreover, a change in ownership would presumably directly contradict the objectives of the Proposed Action as outlined within the EIS. It is noted that the TIG report's proposal for water rates for the Central Maui agricultural fields is nearly ten times that of what is being charged to the Agricultural Park and Upcountry agricultural users, thus rendering the economic viability of agriculture on the Central Maui fields unfeasible.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality

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Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: blue2.indigo@everyactioncustom.com on behalf of [Robyn Blaisdell](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, November 1, 2019 6:42:10 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

I do not believe the diversion of East Maui streams is in the best interest of the people of Maui, the environment, nor agriculture. The weather conditions are at best uncertain - climate change is upon us and diverting water from one source to a completely different source is not feasible at the present time.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Robyn Blaisdell
735 Kekona Pl Makawao, HI 96768-9027
blue2.indigo@yahoo.com



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Robyn Blaisdell
735 Kekona Pl
Makawao, HI 96768-9027
blue2.indigo@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Robyn Blaisdell:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

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The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *I do not believe the diversion of East Maui streams is in the best interest of the people of Maui, the environment, nor agriculture. The weather conditions are at best uncertain - climate change is upon us and diverting water from one source to a completely different source is not feasible at the present time.*

Response 2: We acknowledge your comments. Climate change is discussed in Section 4.3.1 of the Draft EIS. This section recognizes that the State of Hawai'i overall has been experiencing region-specific impacts that have been attributed to climate change, such as chronic flooding during king tides, severe shoreline erosion, changes in rainfall patterns, severity of storms and coral die off. While there is little consensus about the exact nature, magnitude, and timing of these changes, evidence indicates that there has been a rise in air and sea surface temperatures, a decrease in the prevailing northeasterly trade winds, a decline in average rainfall resulting in a decline in stream base flow, an increase in ocean acidity, and sea level rise (SOEST, 2014). Hence, it is anticipated that climate change will adversely impact the State. Since the warmer and drier conditions will bring about changes to the aquifers and surface water sources, one of the effects of warmer temperatures would be a decrease in rainfall.

Furthermore, the Draft EIS discusses the implications of climate change on the Proposed Action specific to the three geographic areas discussed in the Draft EIS and Section 3.4.7 (Natural Hazards) discusses climate change through a comparative analysis of the various alternatives considered in the Draft EIS. Ultimately, the Draft EIS concludes that the Proposed Action will not have significant impacts on the climate or contribute to climate change. The EMI Aqueduct System is gravity fed and is extremely energy efficient. The Draft EIS does note, however, that the exact nature of how the climate will change and impacts from any changes is unknown, and that as research into this area continues, there will be increased knowledge of the most effective ways to focus efforts toward adaptation strategies to address climate change.

However, Section 4.3.1 of the Final EIS has been expanded to include information from the LRFI, CIA, and the Terrestrial Flora and Fauna Technical Report conducted in conjunction of

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this EIS as shown on pages 4-89 to 4-91 of the EIS as it relates to climate change impacts to each of respective environmental resource category technically assessed.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: rona@everyactioncustom.com on behalf of [Rona Bennett](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 18, 2019 5:48:57 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

I honestly cannot believe this is happening after all the opposition of Hawaii State residents. Do not give away water to A&B. It is unethical

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Rona Bennett
3655 Sunset Pl Honolulu, HI 96816-2313
rona@fightingeel.com



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September 3, 2021

Rona Bennett
3655 Sunset Pl
Honolulu, HI 96816-2313
rona@fightingeel.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Rona Bennett:

Thank you for comments dated October 18, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai. I honestly cannot believe this is happening after all the opposition of Hawaii State residents. Do not give away water to A&B. It is unethical*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams

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to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: staceymjohnston@everyactioncustom.com on behalf of [Stacey Johnston](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 12, 2019 10:34:07 AM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

When will these large agricultural corporations learn to SHARE RESOURCES with the people who depends on that water? Water is a human right and diverting this precious resource for the profits of one company is a disgrace.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Stacey Johnston
Makawao, HI 96768
staceymjohnston@gmail.com



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10238-04
September 3, 2021

Stacey Johnston
Makawao, HI 96768
staceymjohnston@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Stacy Johnson:

Thank you for comments dated October 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also

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include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *When will these large agricultural corporations learn to SHARE RESOURCES with the people who depends on that water? Water is a human right and diverting this precious resource for the profits of one company is a disgrace.*

Response 2: With respect to the Draft EIS, Chapter 4 (Description of Existing Environment, Impact, and Mitigation Measures), provides a comprehensive description and impact analysis of the East Maui License Area, as well as in Upcountry Maui and the Central Maui agricultural fields. That analysis considered conditions, impacts, and mitigations under numerous environmental measurements, e.g., Geology and Topography, Soils, Hydrology, Surface Waters, Groundwater, Coastal Waters, Drainage, Natural Hazards, Climate and Climate Change, Sea Level Rise, Flood and Tsunami Hazard, Hurricanes and Wind Hazard, Seismic Hazard, Natural Environment, Flora, Fauna and Invertebrates, Historic and Archaeological Resources, Cultural Resources and Practices, Socio-Economic Characteristics, Population/Demographics, Social Characteristics, Economic and Fiscal Impacts, Agricultural Economic Impacts, Recreational Uses and Park Facilities, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Services and Facilities, Police, Fire, and Medical Services, Education, Solid Waste Collection and Disposal, Infrastructure and Utilities, Water Systems, Wastewater Systems, and Electrical Systems. The analysis identifies those environmental criteria where no significant effects are expected, and where there may be impacts. As it relates to environmental impacts anticipated to occur under the Proposed Action, the majority of these occur within the License Area. These impacts are related to stream habitat, as there will be a reduction from natural flow conditions which can be mitigated by adjustments in diversions to minimize entrainment; terrestrial flora and fauna resources, as well as historic and archeological resources, from access into the License Area which can be mitigated by avoidance and minimization measures related to management and protocol for access; cultural resources and practices which can be mitigated by a myriad of recommendations proposed by Cultural Surveys Hawai‘i; and socio-economic characteristics which can be mitigated by further public outreach and consultation.

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Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: starmullins@everyactioncustom.com on behalf of [Star Carlin](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Water Diversion Environmental Impact Statement
Date: Friday, November 1, 2019 6:21:00 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to continue diverting the streams of East Maui. It is time to stop these practices! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

Federal organizations like the Forest Service are now looking at ways to redress the harms caused by colonization and disregard for the rights of Native Hawaiians. Rather than continue practices which are not pono we should be looking to redress past wrongs. How does your impact statement address the rights of indigenous people to their historic waterways.

The proposal will not allow hiking unless someone requests permission. Why does a private entity have control of the right for citizens to hike on these public lands?

The DEIS does not address the need for invasive species control on the land around these waterways. Given the magnitude of the invasive species problem on Maui this is an unacceptable omission. Please require that this be addressed.

I live on the Big Island where large swaths of our Ohio trees are dead because of ROD. The DEIS should address the procedures for dealing with Rapid Ohio Death prevention measures on the controlled lands. This should be required.

Today is a good way for human beings to stop assuming that we should control the resources of the Earth and overlook the damage that we are causing. Please do not allow this to happen.

Respectfully,
Star Carlin

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Star Carlin
Mountain View, HI 96771
starmullins@hotmail.com



WILSON OKAMOTO
CORPORATION
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10238-04
September 3, 2021

Star Carlin
Mountain View, HI 96771
starmullins@hotmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Star Carlin:

Thank you for comments dated November 1, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to continue diverting the streams of East Maui. It is time to stop these practices! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

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The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

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The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *Federal organizations like the Forest Service are now looking at ways to redress the harms caused by colonization and disregard for the rights of Native Hawaiians. Rather than continue practices which are not pono we should be looking to redress past wrongs. How does your impact statement address the rights of indigenous people to their historic waterways.*

Response 2: We acknowledge your comments. Section 4.6 of the Draft EIS describes several impacts associated with traditional Hawaiian cultural practices. Specifically, Section 4.6 of the Draft EIS states:

Several community participants voiced their concern regarding indigenous freshwater species that may be impacted by the act of diverting water. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē, or Chinese snail), crayfish, prawns, and hīhīwai (endemic grainy snail; Neritina graposa), which are still gathered regularly by residents for personal consumption. Furthermore, community participants shared their concern of water not exiting stream beds and flowing into the ocean. This estuary environment creates an ecosystem where freshwater and saltwater species spawn and travel back upstream (such as e) or continue to grow in the ocean. Specific streams mentioned by community participants where this impact is identified include: Wahinepe'e, Puohokamoa, Ha'ipua'ena, Honopou (Puniawa Tributary), Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Waiokamilo, Wailuānui (Waikani Waterfall), Kopili'ula, Pa'akea, Kapā'ula, Hanawī, Makapipi, Waiohue, Waikamoi (Alo Tributary), Hanehoi, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Kualani (or Hāmau), East Wailuāiki, West Wailuāiki, Pua'aka'a Tributary, and Waia'aka. It is understood that these streams were subject to the CWRM D&O decision...

A majority of participants who are taro farmers voiced their concern of the lack of water needed to maintain a healthy and productive lo'i kalo or taro patch. A

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cold, vigorous flow of water is needed for the production of kalo. Without an ample amount of water continuously flowing, many taro crops have been subject to invasive species such as the apple snail, root rot, and growths. Many taro farmers are unable to continue their traditional and generational cultural practice. Specific streams mentioned by community participants where this impact is identified include: Honopou (Puniawa Tributary), Waikamoi (Alo Tributary), Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punala'u (Kōlea and Ulunui Tributaries), Honomanū, Nua'ailua, Pi'ina'au, Palauhulu (Hauoli Wahine and Kano Tributaries), 'Ōhi'a (or Waianu), Waiokamilo, Kualani (or Hāmau), Wailuānui (Waikani Waterfall), West Wailuāiki, East Wailuāiki, Kopili'ula, Pua'aka'a, Pa'akea, Waia'aka, Kapā'ula, Hanawī, Makapipi, and Waiohue. However, these streams were subject to the CWRM D&O decision.

While no human burials have been identified by previous archaeological studies within or immediately adjacent to the License Area, historical research indicates that Honomanū Valley and other areas throughout East Maui once held a sizable population. LCA documentation indicates that there were settlements along the coast, however, a pedestrian survey was also conducted where there was evidence of habitation in the higher reaches of the valley (E. M. Fredericksen and Fredericksen 1998b).

Hence, impacts to cultural resources and practices were identified during the Draft EIS. However, it is acknowledged that CWRM D&O has the potential to reduce or eliminate some of the cultural impacts associated with the Proposed Action, particularly given the full restoration of the streams in the historic taro-growing areas in East Maui. Based on comments received in response to the Draft EIS, CSH conducted additional consultation after the publication of the Draft EIS, as documented in the CIA, and summarized in EIS Section 4.6, as shown on pages 4-239 to 4-252 of the EIS. The CIA, and Section 4.6 of the EIS, have been updated to include a reformatting of the identified impacts to the regional environment, taro farming, freshwater ecosystems, cultural sites, access by cultural practitioners, and climate change as a result of the Proposed Action.

The studies to be done by qualified professions as recommended in the CIA are the very same studies that were done for this EIS. Mitigation recommendations were developed based upon community consultation, the CWRM D&O, and the other technical studies that were prepared for the EIS. In general, recommended mitigation includes specific monitoring, training, inspecting, communicating, reporting measures that have been imposed by CWRM under the D&O and recommended by CSH, and within other technical studies.

CSH offers specific recommendations summarized as follows: 1) continue monitoring and public reporting of stream flow volumes through maintenance and upgrades to the existing system of flow meters and totalizers within the License Area; 2) notify and ensure appropriate training of any persons required to enter the License Area as part of the Proposed Action or alternatives

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regarding the potential for discovery of undocumented cultural sites and the procedures for reporting such finds; and 3) facilitate access via an appropriate access policy and procedure for cultural practitioners who wish to enter the License Area to practice their traditional and customary Native Hawaiian rights in accordance with applicable law.

Consistent with the spirit and intent of the process surrounding cultural impact assessments, CSH also recommends that any further amendments to the Proposed Action and its potential impacts on the identified cultural resources, practices, and beliefs be fully vetted with the potentially affected community by engaging relevant stakeholders in discussion. Such discussion would keep the community informed while inviting feedback on approaches to addressing potential impacts and exploring alternatives and appropriate mitigation measures.

There are a number of protections in place for Native Hawaiian traditional and customary practices in the License Area. The 1876 agreement between the State and EMI recognized the existence of other property owners, stating that “existing rights or present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reason of anything hereinbefore granted or covenanted.” Moreover, the prior licenses issued for the License Area issued to EMI in the past continued to recognize the rights of other property owners “for domestic purposes and the irrigation of kuleanas entitled to the same.” See CWRM D&O, FOF 55. Similarly, the relevant revocable permits issued by the State include a clause whereby “*The State reserves the right....to withdraw water from this revocable permit to meet the following requirements as determined by the State in its sole discretion may determine; Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Homelands rights....as well as other statutorily or judicially recognized interests relating to the right to withdraw water.....*” It is expected that the lessee under the Water Lease would be subject to similar requirements and in any event would be obligated honor all Constitutionally protected traditional and customary rights.

Comment 3: *The proposal will not allow hiking unless someone requests permission. Why does a private entity have control of the right for citizens to hike on these public lands?*

Response 3: Please note that access into the License Area is managed in partnership by the DLNR and EMI as discussed in Section 4.8 of the Draft EIS. Hence, this is the required protocol to allow for hiking in the License Area. Note that Section 4.8 has been revised as shown on pages 4-305 to 4-309 of the EIS, which serve to better identify the recreational resources in the vicinity of the License Area and more accurately describe current access protocol for entering the License Area as it relates to recreational activities.

Moreover, Section 3.2.2.2 of the Draft EIS discusses an alternative, the “Modified Lease Area” alternative, that would allow for more public access into the proposed License Area that could conceivably still meet the objectives of the Proposed Action. Specifically, Section 3.2.2.2 of the Draft EIS states:

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Although A&B's May 14, 2001 submittal referred to a License Area comprised of approximately 33,012.91 acres of State-land (subject to review and confirmation by the Department of Accounting and General Services, Survey Division), the BLNR has the discretion to set the geographic parameters of the Lease Area to an area that is smaller, but still maintains the safety and integrity of the EMI Aqueduct System. Limiting the geographic extent of the Lease Area to that which is reasonably necessary to operate the EMI Aqueduct System with appropriate buffers to ensure public safety and the security of the system, could be consistent with the objectives of the Proposed Action. EMI would not manage public access into the License Area, and that obligation will fall upon a State agency. While some have advocated for greater or unfettered public access into the License Area, potentially adverse impacts of such access could include the introduction and spreading of invasive species and damage to historic resources.

Hence, the State would presumably manage public access within State-owned lands that are not within the License Area. Please note that Section 3.2.2.2 of the Final EIS has been updated as shown on pages 3-21 to 3-24, in order to take into account DLNR-DOFAW's Draft EIS comments and to include a more robust discussion regarding the potential impacts from increased public access into the License Area.

Furthermore, Section 1.3.1 and 3.2.2.2 of the Final EIS have been updated to acknowledge that under the revocable permits (RPs) for the License Area that were in effect for 2020 and that will be in effect for 2021, the Hanawā Natural Area Reserve (NAR) was removed from the RP area as shown on page 3-22 of the EIS. Thus, it is anticipated that BLNR may remove the Hanawā NAR from the License Area under any Water Lease. The Hanawā NAR comprises approximately 7,500 acres within the approximately 33,000-acre License Area, and is part of the Nāhiku portion of the License Area. No portion of the EMI Aqueduct System is within the Hanawā NAR. It is unlikely that the removal of the Hanawā NAR from the License Area will result in additional public access to the area, as the NAR rules restrict public access. For these reasons, the EIS states that a reduction in the License Area has the potential to result in increased impacts to flora and fauna resources, but that will ultimately depend on when increased access takes place and the nature of the public access that the State, as landowner, allows.

Comment 4: *The DEIS does not address the need for invasive species control on the land around these waterways. Given the magnitude of the invasive species problem on Maui this is an unacceptable omission. Please require that this be addressed.*

Response 4: Section 4.4 of the EIS specifically addresses the impacts of the Proposed Action to flora and fauna resources within the License Area, including a discussion of the cumulative impacts. Appendix C (Terrestrial Flora and Fauna Technical Report) of the EIS that was

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prepared by SWCA included a survey of approximately 33,000 acres of land in East Maui referred to in the SWCA report as the License Area and approximately 30,000 acres of agricultural land in Central Maui that it referred to as the Service Area. These areas were collectively referred to as the Study Area throughout the SWCA report. This report is summarized in Section 4.4 of the EIS, which has been supplemented with a discussion on potential impacts on a watershed by watershed basis, using data produced by the HSHEP model and HIGAP data provided by the State, along with surveys conducted within the region as shown on page 4-113 of the EIS.

In summary, the Proposed Action is not anticipated to have any significant impacts on the terrestrial flora and faunal resources. Section 6.3 of Appendix C in the Final EIS states that, *“The increased water flows in the streams would likely have very little impact on terrestrial flora and fauna.”* Hence, this statement refers to all existing flora and fauna within the License Area and is not limited to only native species. As discussed in Section 5.1.2.1 of Appendix C in the Draft EIS, the majority (60%) of the License Area is already composed of “Open / Closed ‘Ōhi‘a Forest,” which mainly constitutes the higher elevation areas where water is not diverted as shown by Figure A-2 of Appendix C. Moreover, the immediate area surrounding the EMI Aqueduct System tends to be composed of “alien forest” which consist of non-native species.

Moreover, as discussed in Section 2.1 of the Draft EIS, the Water Lease lessee will be subject to all applicable requirements under HRS § 171-58 regarding watershed management plans. The requirement for a watershed management plan is statutory and requires either that a watershed management plan be in place prior to the issuance of a lease, or that the lease contain a covenant requiring the joint development and implementation of a watershed management plan. In the time since the publication of the Draft EIS, the BLNR approved, on October 11, 2019, the minimum content requirements for a watershed management plan. A copy of the BLNR-approved report has been added to the EIS as Appendix O-1. Section 2.1 of the EIS has been updated to reflect this new information about the contents of an acceptable watershed management plan. See pages 2-2 to 2-4 of the EIS. The minimum content requirements under the category of "Goals" specifically addresses invasive species, including calling for removal and control of non-native hooved animals, removal or containment of damaging invasive plants and animals that threaten important watershed forests, monitoring and controlling forest threats (i.e., fires, predators, and plant diseases), restoring and out-planting native species; and community outreach and education. These goals are more specifically described in Section 2.1 of the EIS as shown on pages 2-2 to 2-4 of the EIS.

Comment 5: *I live on the Big Island where large swaths of our Ohio trees are dead because of ROD. The DEIS should address the procedures for dealing with Rapid Ohio Death prevention measures on the controlled lands. This should be required.*

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Response 5: We acknowledge your comments above and they have been taken into consideration. Note that the Draft EIS did not discuss any targeted mitigation or avoidance measures as it relates to Rapid 'Ōhi'a Death (ROD) fungus. Please note that Section 4.4.1 of the Final EIS has been revised to include the recommendations from the USFWS as shown on pages 4-121 to 4-124 of the EIS.

Comment 6: *Today is a good way for human beings to stop assuming that we should control the resources of the Earth and overlook the damage that we are causing. Please do not allow this to happen.*

Response 6: We acknowledge your comments. Please note that we provide you with detailed responses to each of your comments above.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: teriskillman77@everyactioncustom.com on behalf of [Teri Skillman](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 11, 2019 9:01:19 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents. What would happen if hoarding water stopped and water was restored to the stream for the kalo farmers and the community to use? How would this affect A & B's brand and ultimately gain the company much needed community support?

Have you seen this TED talk by Rob Harmon on how the market can keep streams flowing?

<https://youtu.be/YeJhVtJKJU8>

What would this model do for Maui's streams? Have you taken time to apply a model like this?

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Teri Skillman
2833 Nihi St Honolulu, HI 96819-3838
teriskillman77@gmail.com



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CORPORATION
INNOVATORS • PLANNERS • ENGINEERS

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Teri Skillman
2833 Nihi St
Honolulu, HI 96819-3838
teriskillman77@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Teri Skillman:

Thank you for comments dated October 11, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018. The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through

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several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoa, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural

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integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *The DEIS doesn't talk about how to restore the 13 streams in the Honopou to Kailua area where lots of people live and farm and gather. All that is said is that its estimated that all of the water will be diverted from the streams 60% of the time. Those diversions will decimate 85% of native streamlife habitat and impact thousands of local residents.*

Response 2: You are correct that the Draft EIS does not talk specifically how to restore the non-petitioned streams in the Honopou to Kailua area as that is not part of the Proposed Action. These streams are anticipated to be diverted as they have been. Please note that while the Draft EIS does in fact identify 13 non-petitioned streams, it has been determined since that time that there are only 12 non-petitioned streams within the License Area. Puakea Stream was mistakenly identified as a separate stream. However, since that time, it has been determined that Puakea is actually a tributary to Pa'akea Stream which is classified under the CWRM D&O as a "connectivity stream."

Regarding your comment that it is said that all the water will be diverted from streams 60% of the time, it is unclear where this statement comes from as this is not stated in the Draft EIS. However, under the Proposed Action, it is estimated that a total of approximately 87.95 mgd will be diverted from the License Area in compliance with the CWRM D&O and IIFS set for the License Area streams, and the EMI Aqueduct System will divert approximately an additional 4.37 mgd from privately owned lands between Honopou Stream and Māliko Gulch for a total of approximately 92.32 mgd of stream water.

Chapters 3 and 4 of the EIS directly address the ecological impacts of the Proposed Action and its alternatives, including the continued diversion of the non-petitioned streams. The Assessment of Impacts of Stream Diversions Using the Hawaiian Stream Habitat Evaluation Procedure, provided as Appendix A (the HSHEP model), as summarized in Section 4.2.1 of the EIS, assesses the Proposed Action's impacts to the native amphidromous stream species as well as native insect species. The Proposed Action is anticipated to decrease the number of habitat units in the License Area streams by 36.1% from the Natural Flow scenario. Please note that Section 4.2.1 has been updated to include a clearer discussion on the stream diversion impacts on native stream animal habitats as provided on pages 4-61 to 4-67.

The Natural Flow condition was the maximum boundary comparison scenario created for modeling, in which all diversions were modeled as closed with no water diversion and no impact on passage or entrainment of animals and resulted in the maximum available HU predicted. The assumption with the Natural Condition is if no modifications or diversions existed, then this

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would be the maximum available HU for native stream species within the License Area. In other words, approximately 63.9% of the total amount of habitat units estimated by the HSHEP would remain under the Proposed Action.

Regarding your comment about decimation of 85% of native stream life habitat, that is not correct. As explained above, the proposed Water Lease would retain almost 64% of all possible HU within the License Area. Only when looking at the subset of the non-petitioned streams is the estimated HU retention reduced to 11.8% of HU available. Moreover, the EIS looks at impacts to all of the streams that could be diverted under a Water Lease and not just a subset of those streams, and assesses the impacts of the diversions across an array of environmental criteria.

Comment 3: *What would happen if hoarding water stopped and water was restored to the stream for the kalo farmers and the community to use? How would this affect A & B's brand and ultimately gain the company much needed community support?*

Response 3: Chapter 3 of the Draft EIS includes an analysis of: (a) a Reduced Water Volume alternative; (b) an Alternative Lease Duration alternative; (c) a Modified Lease Area alternative; and (d) a "No Action" alternative, meaning a scenario where no Water Lease is issued. Chapter 3 of the Draft EIS also identified other alternatives that have the potential to meet the objectives, such as developing new water sources to supplement or replace the water diverted under the Water Lease. For example, the development of groundwater wells, the use of reclaimed water from the Wailuku-Kahului Wastewater Reclamation Facility, and the development of a significant new water storage facility. However, as discussed in Chapter 3, those alternatives were determined to be infeasible due to expected intensification of environmental effects along with other factors, and therefore those alternatives were well-discussed, but ultimately not assessed to the same degree as (a) through (d). Additionally, Chapter 3 acknowledged an alternative scenario whereby the EMI Aqueduct System would be owned by someone other than EMI. However, that alternative was also deemed to be infeasible for the reasons discussed in Chapter 3. Moreover, based on comments received on the Draft EIS, the alternatives analysis in Chapter 3 has been further expanded within the spectrum of alternatives presented in the Draft EIS. See pages 3-2 to 3-19 in the EIS.

Chapter 3 of the Draft EIS includes a comparative evaluation of the environmental "benefits, costs, and risks" of the Proposed Water Lease and "each reasonable alternative" i.e. (a) through (d) across a spectrum of environmental factors, such as Soils, Surface Waters and Aquatic Environment, Groundwater, Coastal Waters, Drainage, Natural Hazards, Flora, Fauna, and Invertebrates, Historic Resources, Cultural Resources and Practices Social Characteristics, Economic and Fiscal Resources, Agricultural and Related Economic Resources Recreational Resources, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Water Systems, and Public Services and Facilities. However, please note that Section 3.4 of the Final EIS includes a comparative table of the various alternatives and the associated impacts of each alternative as shown on pages 3-49 to 3-80 of the EIS.

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Comment 4: *Have you seen this TED talk by Rob Harmon on how the market can keep streams flowing?*

<https://youtu.be/YeJhVtJKJU8>

What would this model do for Maui's streams? Have you taken time to apply a model like this?

Response 3: Please note that the video you provided is not within the scope of the EIS to assess and apply. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

¹ Please note that the Office of Planning and Sustainable Development - Environmental Review Program website is still hosted on OEQC's website housed under the Department of Health and will eventually transfer under the Office of Planning. However, we are not aware when that transition will occur.

From: toni7041@everyactioncustom.com on behalf of [Toni Eaton](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Monday, October 21, 2019 4:50:25 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

I would also like to know if A&B/Mahi Pono:

- 1) plan to install gauges to make sure the IIFS set by CWRM are being adhered to?
- 2) Mitigate the existing seepage/loss of 41 mgd of water?
- 3) How many acres will stay in diversified agriculture in perpetuity?
- 4) How many acres are deemed Crown Land?
- 5) what are the exact acreage within the proposed lease area?
- 6) Did the ICA decision uphold the provision that no matter if the lease is approved or not that the Maui County DWS will still get at least 8 mgd from the Kamole Water Treatment Plant to ensure the public's health and safety?

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Toni Eaton
159 Moolu Cir Wailuku, HI 96793-3317
toni7041@yahoo.com



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September 3, 2021

Toni Eaton
159 Moolu Cir
Wailuku, HI 96793-3317
toni7041@yahoo.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Toni Eaton:

Thank you for comments dated October 21, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.*

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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The need for the Water Lease is derived from the absence of practicable alternative sources of water and an alternative infrastructure to meet these water needs on Maui.

On June 20th, 2018, the CWRM issued its Interim Instream Flow Standards (IIFS) Decision and Order (D&O) for 27 East Maui streams that were subject to IIFS Petitions that evolved through several CWRM proceedings starting in May 2001. CWRM evaluated each of the streams subject to the IIFS Petitions individually, analyzing their flow characteristics, instream uses, offstream uses, habitat restoration, potential for fish and other stream animals, recreational opportunities, and scenic values. The subject streams were then evaluated under an integrative approach with consideration for the overall ecological ramifications of the decision. CWRM also considered the economic ramifications of its decision on offstream uses, as required by the State Water Code, with a specific focus on supporting public uses such as drinking water, as well as diversified agriculture, including support for agricultural uses of lands designated by the State as Important Agricultural Lands (IAL), as are approximately 22000 acres of the applicable Central Maui fields.

The CWRM ordered full and partial restoration of streams it concluded to have the potential to benefit greatly from the restoration of flow to 64% of the median base flow (BFQ50), which generally represents the flow necessary to restore 90% of the habitat in a stream (H90), based on the biological diversity and habitat that already exists. Restoration of these streams (Pi'ina'au, Wailuānui, Honomanū, Waikamoi, Nua'ailua, East Wailuāiki, Kopiliula, and Waiohue) was ordered to allow the stream species to flourish and reproduce, benefitting not only the natural environment but also allowing for better opportunity for the exercise of traditional and Hawaiian right (CWRM D&O, COL 131).

Various streams within the License Area have low biological ratings and or do not have the potential to improve drastically with increased flows. These streams were set at connectivity flow which is twenty percent (20%) of the instream flow (CWRM D&O, COL 30). Streams that are set at connectivity flow are: Kapā'ula, Pa'akea, Pua'aka'a, Puohokamoā, Ha'ipua'ena, Nua'ailua, and Hanawī. (CWRM D&O at 268-269). None of these streams have registered diversions for taro cultivation nor is there taro cultivation known to occur on these streams (CWRM D&O, COL 147).

The CWRM acknowledged that in the context of a proceeding to set IIFS, it does not have the authority to determine how much water may be used for noninstream use for municipal and agricultural uses. That authority lies with the BLNR in issuing a water lease pursuant to HRS § 171-58, subject to the IIFS set by the CWRM. (CWRM D&O, COL 148). Recognizing that the noninstream uses, especially municipal use, are valued uses, the CWRM set the IIFS to allow the MDWS to continue to divert water through its Upper and Lower Kula Pipelines. (CWRM D&O, COL 149). In not requiring full restoration of all streams, the CWRM has allowed some streams

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to continue to be diverted so that the BLNR may continue to license the diversion of water not needed to meet the IIFS from those streams for noninstream use. The available water would also include freshets and stormwater which are not included in the calculation of the IIFS. (CWRM D&O, COL 150).

The CWRM recognized that the EMI Aqueduct System remains a valuable asset that delivers noninstream public trust benefits, such as drinking water, as well as other reasonable and beneficial uses. The reduction in diversions does not, by itself, compromise the structural integrity of the EMI Aqueduct System so long as it continues to be maintained as a single coordinated system. The CWRM considered factors that contribute to the operational capacity of the existing EMI Aqueduct System by allowing some water diversions from streams in the higher elevation eastern portion of the watershed. (CWRM D&O, COL 151).

The 2018 CWRM D&O was described in detail in Section 1.3.4 of the Draft EIS and Final EIS.

Comment 2: *I would also like to know if A&B/Mahi Pono:*

1) plan to install gauges to make sure the IIFS set by CWRM are being adhered to?

Response 2: Upon making the voluntary commitment to permanently restore the stream flows in the “taro streams”, EMI returned approximately 90-95% of the natural flow of the streams—all that could be done by adjusting (opening or closing) the diversion gates. The final 5-10% to achieve complete restoration requires modifications to diversions, essentially construction projects, thus triggering various permitting processes that continue to be pursued.

Potential impacts from the abandonment of structures and equipment as it relates to native stream habitat was assessed and discussed in Appendix A, the Assessment of the Environmental Impact of Stream Diversions on Instream Habitat in East Maui Streams using the Hawaiian Stream Habitat Evaluation Procedure (HSHEP) Model report.

The work related to diversion modifications required for compliance with the IIFS under the CWRM D&O is not tied to the Water Lease. Those actions are separate from the proposed Water Lease and are a requirement under the CWRM D&O with or without BLNR issuance of a Water Lease. However, for clarification, the requirement for full restoration of stream flow in several streams under the CWRM D&O does not require removal of diversion structures. It requires permanent restoration of flows.

The CWRM D&O calls for numerous modifications to the amount of water that can be diverted from the East Maui streams, but expressly did not call for the removal of diversion structures. CWRM ordered in relevant part (see CWRM D&O at p. 269):

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

CWRM will be looking at how and when specific diversions should be modified in the course of overseeing the implementation of the CWRM D&O, as the treatment of diversion structures is a matter that was addressed by CWRM in the D&O through the IIFS proceedings on the East Maui streams.

Comment 3: *Mitigate the existing seepage/loss of 41 mgd of water?*

Response 3: It is unclear where you are citing this 41 mgd of water loss. We assume that your comment relates to the physical condition of the EMI Aqueduct System. In this regard, the EMI Aqueduct System fulfills its purpose of collecting and transporting surface water from East Maui to Central Maui in a very efficient manner. It does so without any motors or machinery, the entire system works by gravity—thus it is extremely energy-efficient. Further, as noted by the USGS study titled, “Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawaii (2012)” the EMI Aqueduct System has no net losses of water over the entirety of the 72 miles of ditch and tunnel that make up the EMI Aqueduct System. In other words, net system losses are not present within the EMI Aqueduct System.

Any water losses take place beyond the EMI Aqueduct System (i.e., past Kamole-Weir WTP) and within the Central Maui Field Irrigation System. Without the planned improvements to the Central Maui Field Irrigation System, approximately 22.7% of the water delivered to the Central Maui agricultural fields is accounted for as system losses in the Central Maui Field Irrigation System (i.e., water lost to seepage and evaporation, and including other water uses, such as water used for reservoirs, fire protection, dust control, and hydroelectric uses). Seepage loss within the Central Maui Field Irrigation System is recharged back into the groundwater in the Central Maui Aquifer System.

Comment 4: *How many acres will stay in diversified agriculture in perpetuity?*

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Response 4: Please note that Mahi Pono intends to secure the proposed Water Lease to continue to transition the former sugarcane fields into a diversified agricultural operation over the next 30 years at least.

Comment 5: *How many acres are deemed Crown Land? what are the exact acreage within the proposed lease area?*

Response 5: Please note that that this is not within the scope of the EIS to analyze. The scope of the EIS assesses the anticipated environmental impacts associated with the issuance of a long-term (30 years) Water Lease by BLNR for the continued "*right, privilege, and authority to enter and go upon*" the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas for the "*purpose of developing, diverting, transporting, and using government owned waters*" through the existing EMI Aqueduct System for the uses described in the EIS. The environmental impacts of the potential Water Lease are included through Chapter 4 of the EIS.

Comment 6: *Did the ICA decision uphold the provision that no matter if the lease is approved or not that the Maui County DWS will still get at least 8 mgd from the Kamole Water Treatment Plant to ensure the public's health and safety?*

Response 6: MDWS' right to access this source on a long-term basis is contingent upon the issuance of the Water Lease. As discussed in Section 3.3 of the Draft EIS:

The existing water delivery agreements with the MDWS are contingent upon the Water Lease being issued, therefore if no Water Lease is issued, it is assumed that the delivery of water to the MDWS would terminate. As a consequence, domestic and agricultural water needs in Upcountry Maui would need to be met by alternative water sources that would need to be developed by the MDWS. At this point in time, it is unknown whether sufficient groundwater resources exist in Upcountry Maui to meet these water demands. It is anticipated that the development of alternative water-source infrastructure would be prohibitively expensive, and depending upon the specific sources, or combination of sources, could result in significant direct adverse impacts to the environment.

Hence, if no Water Lease is issued, it is assumed that the existing MDWS agreements in place would terminate.

Chapter 3 of the Draft EIS includes a comparative evaluation of the environmental "benefits, costs, and risks" of the Proposed Water Lease and "each reasonable alternative" i.e. (a) through (d) across a spectrum of environmental factors, such as Soils, Surface Waters and Aquatic Environment, Groundwater, Coastal Waters, Drainage, Natural

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Hazards, Flora, Fauna, and Invertebrates, Historic Resources, Cultural Resources and Practices Social Characteristics, Economic and Fiscal Resources, Agricultural and Related Economic Resources Recreational Resources, Visual Resources, Air Quality, Noise, Hazardous Materials, Traffic, Public Water Systems, and Public Services and Facilities. However, please note that Section 3.4 of the Final EIS includes a comparative table of the various alternatives and the associated impacts of each alternative as shown on pages 3-49 to 3-80.

Your written comments and this response will be reproduced in the Final EIS. It is anticipated the Final EIS, including the various technical studies associated with it, will be available for review on September 8, 2021, at the Office of Planning and Sustainable Development – Environmental Review Program (formerly the Office of Environmental Quality Control) website.¹ Should you wish to request a copy of the Final EIS or portions thereof, please submit your request in writing to Wilson Okamoto Corporation, attention Mr. Dalton Beauprez at 1907 South Beretania Street, Suite 400 Honolulu, HI 96826.

We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: zpastorfieldli@everyactioncustom.com on behalf of [Zoe Pastorfield-Li](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Saturday, October 12, 2019 6:52:34 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui.

This is truly outrageous. We need to put people and natural resources first, and not work in service of illegal and harmful private interests.

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,
Zoe Pastorfield-Li
1919 Hunnewell St Honolulu, HI 96822-2148
zpastorfieldli@gmail.com



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10238-04
September 3, 2021

Zoe Pastorfield-Li
1919 Hunnewell St
Honolulu, HI 96822-2148
zpastorfieldli@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Zoe Pastorfield-Li:

Thank you for comments dated October 12, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

Comment 1: *Please accept my comments in opposition to Alexander and Baldwin’s proposal to further divert the streams of East Maui.*

This is truly outrageous. We need to put people and natural resources first, and not work in service of illegal and harmful private interests.

Response 1: We acknowledge your comments. Please note that the objectives of the Proposed Action, as stated in the DEIS, are to: (i) preserve and maintain the EMI Aqueduct System, including its access roads; (ii) continue to meet domestic and agricultural water demands in Upcountry Maui (iii) continue to provide water for agricultural purposes in Central Maui (specifically, to continue to transition fields previously used for sugarcane cultivation into new, diversified agricultural uses); and (iv) continue to serve community water demands in Nāhiku as noted in Section 1.2 of the Draft EIS. The use of this water will be subject to ensuring the flows of water in the East Maui streams under the interim instream flow standards (IIFS) that were established by the Commission on Water Resource Management (CWRM) in June 2018.

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We appreciate your interest and participation in this environmental review process.

Sincerely,



Keola Cheng
Director of Planning

cc: Suzanne Case, Chair, Department of Land and Natural Resources
A&B / EMI, Applicant

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From: molokailori@everyactioncustom.com on behalf of [Lori Buchanan](#)
To: [Public Comment](#)
Subject: Comments on Alexander and Baldwin's Draft Environmental Impact Statement
Date: Friday, October 11, 2019 5:16:10 PM

Dear Mr. Matsukawa,

Please accept my comments in opposition to Alexander and Baldwin's proposal to further divert the streams of East Maui. Enough is enough! East Maui streams should not be diverted for agriculture in central Maui, unless and until the streams of East Maui have a healthy flow of water mauka to makai.

This longstanding corporate greed for our water, a public trust, should be done once and for all. The law is clear. Stop water diversions. St

Thank you for this opportunity to submit comments on this Draft EIS.

Sincerely,

Lori Buchanan
Molokai

Sincerely,
Lori Buchanan
PO Box 133 Hoolehua, HI 96729-0133
molokailori@gmail.com



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10238-04
September 3, 2021

Lori Buchanan
PO Box 133
Hoolehua, HI 96729-0133
molokailori@gmail.com

Subject: Draft Environmental Impact Statement
Proposed Lease (Water Lease) for the Nāhiku,
Ke‘anae, Honomanū and Huelo License Areas

Dear Ms. Buchanan:

Thank you for comments dated October 11, 2019 regarding the subject Draft Environmental Impact Statement (EIS) pertaining to the Proposed Lease (Water Lease) for the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas. We acknowledge your comments and concerns which have been considered in the preparation of the Final EIS with regard to meeting content requirements prescribed in Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200. A record of your comments has been appended to the Final EIS in Appendix N.

The following responses are provided to your comments relating to the Draft EIS:

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Proposed Lease (Water Lease) for the
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Corrected Final Environmental Impact Statement



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